

Iowa Department of Public Health Inquiry No. 8.

8/10/2008

Thomas Newton, Director
Iowa Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319-0075

Re: Separate designated smoking rooms according to ASHREA 62.1 Standard 2007

Director Newton,

As you are aware, the Iowa Department of Public Health adopted and filed rules to implement the Smoke-free Air Act of 2008, House File 2212, on June 27, 2008.

Background: In 2004 the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) amended its Standard 62.1 to allow significantly reduced ventilation rates in most workplace indoor environments. For example, under the 2004 standard the ventilation rates for bars was reduced by 69 percent and the rates for restaurant seating areas were reduced by 50 percent, compared to the previous standard. Those reduced ventilation rates applied only to facilities and/or areas where smoking was prohibited. The attraction of significantly reduced ventilation rates is that smaller capital investments are required to purchase and install lower capacity ventilation systems and reduced maintenance plus utility costs are experienced to operate such systems.

Significantly reduced ventilation rates can, however, also impose increased health risks for employees and patrons because the reduced rates create higher concentrations of airborne toxins and carcinogens not associated with tobacco smoke that are commonly found in hospitality trade and other work environments. Such increased concentration of airborne toxins and carcinogens in indoor work environments appears to directly contradict the theme of the Iowa Department of Health's CAFÉ (Clean Air for Everyone) smoking ban advocacy organization. How can reduced ventilation rates and consequential higher concentrations of airborne toxins and carcinogens not related to tobacco smoke provide clean air for everyone?

In 2005 ASHRAE published a policy paper that concluded there is no safe level of exposure to Environmental Tobacco Smoke (ETS). That policy paper was used to support ASHRAE's reduced ventilation rates for "Smoke Free" environments as published in 2004. One of the authors of that policy paper was Dr. Thomas Houston, the former nationwide project director for the Robert Wood Johnson Foundation's \$99 million SmokeLess States program. SmokeLess States included strong advocacy for smoking bans. The foundation ranks among the top ten institutional shareholders of NicoDerm CQ Nicotine Replacement Therapy patch manufacturer, Johnson & Johnson. For example, as of March 31, 2008 Yahoo finance reported that the Robert Wood Johnson Foundation owned about 1.2 percent of the outstanding shares of Johnson & Johnson valued at approximately \$2.3 billion. The foundation also provides millions of dollars in grants to tobacco control, substance abuse and other advocates, including health departments such as the Iowa Department of Public Health. We observe the curious phenomenon of those who aggressively promote smoking bans in the name of clean indoor air also actively supporting reduced indoor ventilation rates that increase concentrations of airborne workplace toxins and carcinogens not associated with tobacco smoke. The obvious connection to me is that this contradiction creates large profits for manufacturers of smoking cessation delivery device products and produces commensurate support and/or appreciation for common stock held by the Robert Wood Johnson Foundation, which in turn assures the continued flow of grant dollars to smoking ban and other health program advocates.

The importance of the above information comes together in the 2007 amendment of ASHRAE's Standard 62.1. That supplement to ASHRAE's ventilation standards allows and provides specifications for separately ventilated smoking rooms. Clearly, in ASHRAE's view those rooms provide adequate protection from exposure to Environmental Tobacco Smoke, even when the surrounding areas employ significantly reduced ventilation rates pursuant to ASHRAE's 2004 amended Standard 62.1.

The text of the current Iowa Department of Public Health rules as published June 27, 2008 makes no provision for any means to regulate, control, mitigate or address Environmental Tobacco Smoke other than to prohibit smoking in public places as defined. This is of particular concern to me based on ASHRAE's apparent position that separately ventilated smoking rooms do provide adequate protection from tobacco smoke, even where surrounding areas have reduced ventilation rates under current ventilation requirements. For facilities that were built or remodeled prior to 2004 a greater degree of "protection" from Environmental Tobacco Smoke would be provided because surrounding areas could enjoy the higher ventilation rates specified in ASHRAE's preceding Standard 62.1. I believe those facilities with higher ventilation rates and separately ventilated smoking rooms would also be consistent with the legislative purposes of HF 2212, as set forth in Section 1., which reads in part:

“. . . in order to protect the public health and the health of employees.”

The absence of any regulatory alternative other than prohibition of smoking is also deeply troubling in light of the Iowa Department of Public Health's statutory duties for regulatory analysis under Iowa Code. Please note in this regard that the Iowa Restaurant Association has requested a regulatory analysis be conducted by the health department, reportedly on July 2, 2008. Concerning the content of regulatory analysis, section 17A.4A 2.a. of Iowa Code states, in part:

“(5) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.”

“(6) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons they were rejected in favor of the proposed rule.”

Questions: Based on the preceding information and my layperson's understanding I ask the following:

1. Were methods other than a prohibition of smoking in public places seriously considered by the Iowa Department of Public Health in promulgating its enforcement rules for HF 2212, the Smokefree Air Act?
2. Why were separately ventilated smoking rooms rejected by the Iowa Department of Public Health as means for compliance with HF 2212, the Smokefree Air Act?
3. The reduced ventilation rates under ASHRAE Standard 62.1 are contingent on "Smoke Free" environments, such as those created for public places under the health department's current enforcement rules. How does the Iowa Department of Public Health reconcile increased health risks to employees and patrons caused by reduced ventilation and consequently higher concentrations of airborne toxins and carcinogens not related to tobacco smoke with the legislative purpose “. . . in order to protect the public health and the health of employees”?

Thank you for your attention to these matters. I look forward to your response.

Finally, please note that this inquiry has been sent by both U.S. Mail and through the health department's Web form. I request a response by both E-Mail and letter from the health department.

Respectfully,

Todd Shanno
President and Director
Iowans for Equal Rights

