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Efforts Of The Occupational Safety And Health Act of 1970 And Effect On Business

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EFFORTS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970
AND EFFECTS ON BUSINESS

by

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Bachelor of Science, Industrial Relations
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An Independent Study
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PERMISSION

Title: Efforts of the Occupational Safety and Health
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CHAPTER I

THE EVOLUTION OF OCCUPATIONAL SAFETY AND
HEALTH IN THE U.S.Introduction

The Industrial Revolution has been changing the way Americans live and conduct business for over one hundred years. Complementing the great advancements in our standard of living are significant humanitarian problems of equal magnitude and importance. Our transition from sailing vessel to super tanker, wood burning stove to microwave cooking has not occurred without incident. Today we find the American business community plagued by questions of high unemployment, fluctuating interest rates, declining productivity and environmental issues. The reality of the economic principle of scarce and limited resources has never been more evident. Pick up any newspaper and you will read about the growing number of business failures with the drastic measures businesses are taking to remain solvent.

The National Safety Council presently estimates that in this year more than 14,000 men and women will be

killed while pursuing an honest days wages.¹ This statistic has proven itself for over two decades. In addition to those killed, 2.2 million men and women will be involved in disabling injuries while at work.² The Federal Government alone spent \$1 billion in 1980 on worker compensation claims.³ The total cost to American business of occupational hazards in terms of lost wages, medical expenses, insurance claims, production delays, lost time of co-workers and equipment damage was estimated by the National Safety Council at \$9.3 billion during 1971 - or nearly one percent of the Gross National Product.⁴ Twenty-five million workdays were lost through absenteeism during 1972; the equivalent of 100,000 man years. The Public Health Service with the Department of Health, Education and Welfare estimates 390,000 new cases of

¹"Job Safety Bill Breaks New Ground", U.S. News, December 28, 1970, p. 17.

"The Crushing Cost of Safety", Dun's Review, January, 1972, p. 53.

²"Safety on the Job Becomes a Major Job for Management", Fortune, November, 1972, p. 37.

³Nicholas Ashford, Crisis in the Workplace: Occupational Disease and Injury, (The MIT Press, Cambridge, Massachusetts, 1976), p. 17.

⁴"Safety on the Job Becomes a Major Job for Management", Fortune, November, 1972, p. 37.

occupational disease will occur annually with an estimated 100,000 deaths per year.⁵ Workers in coke oven plants in Pittsburgh have a propensity for lung cancer ten times that of other steelworkers and for bladder cancer seven and one half times. Of the 500,000 workers now or previously exposed to asbestos, approximately 100,000 will die of lung cancer, 35,000 of pleural cancer and about 35,000 of asbestosis.⁶

Why does a country as technically and socially advanced as ours tolerate such a tremendous waste of human resources? This study will examine the Federal Government's present method for dealing with this problem of safety and health in the American workplace.

Problem Statement

Are the stringent health and safety standards established and enforced by the Occupational Safety and Health Act of 1970 serving to meet that Federal bureaucracies proclaimed purpose of assuring 'so far as possible every working man and woman in the nation safe and healthful working conditions?'

Are the fantastic costs associated with OSHA compliance and required of the business community justi-

⁵Dan Peterson, The OSHA Compliance Manual, (McGraw Hill Book Company, 1979), p. 91.

⁶"Safety Bill Loses Some of Its Bite", Business Week, August 9, 1969, p. 23.

fiable by measure of actual work place related accident statistics compiled over the past ten years?

As early as 1908 the state of New York was enforcing workman's compensation laws which allowed for an injured employee to be compensated for any injury incurred on the job - regardless of fault.⁷ Management decided that by preventing injuries their businesses could save money. Physical conditions were cleaned-up with the idea of reducing workplace accidents. Industrial Safety became a topic of higher priority than it ever had before.

In 1968 President Johnson's administration proposed the first version of an Occupational Safety and Health Act. The proposed bill would have given the Labor Secretary the ability to set minimum safety and health standards for all business activities connected with interstate commerce. The language of the proposal and the idea of establishing a 'safety czar' within the Federal Government was heavily opposed by private enterprise and the bill did not become law.⁸

⁷"Warning, Safety Hazard", Nation's Business, June, 1970, p. 12.

⁸"Changes Ahead in Washington's Labor Policies", Nation's Business, September, 1970, p. 47.

In 1969 Richard Nixon asked that safety and health standards be organized to protect all American workmen. The Nixon bill called for an independent agency similar to the National Labor Relations Board to be established with the power to develop 'national consensus' standards of safety and health. The bill was to give individual states two years to come up with their own standards. Again, private enterprise was tremendously opposed to any 'federal in-plant regulations.' The bill was delayed.⁹

In 1970 a bill sponsored by Representative Dominick V. Daniels (D,NJ) would have given the Secretary of Labor sweeping powers to set standards, inspect and investigate standards compliance, preside over hearings on violations and render a decision. The Secretary of Labor would act as legislature, policeman, judge and jury. Inspectors would have the authority to close plants for up to five days. The language of the bill gave employees the duty to 'keep a safe shop.' The bill also called for employers to pay employees who were on strike over claims the safety law was being violated. Individual states were to lose all authority under the Daniels bill.¹⁰

⁹"Nixon's Call for Job Safety Rule", U.S. News, August 18, 1969, p. 63.

¹⁰"Safety Bill Loses Some of Its Bite", Business Week, August 9, 1969, p. 23.

In May of 1969 the Walsh-Healy Public Contracts Act became one of the few operative pieces of legislation dealing with occupational safety and health.

The Walsh-Healy Public Contracts Act requires that contracts entered into by any agency of the United States for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000 must contain, among other provisions, a stipulation that "no part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract."¹¹

What had evolved as this nations attempt to combat workplace accidents was signed on December 29, 1970 by then President of the United States, Richard M. Nixon - the Williams-Steiger Occupational Safety and Health Act of 1970. OSHA instantly became one of the most significant, all encompassing and controversial pieces of legislation ever to affect the business community. On April 28, 1971 the Occupational Safety and Health Act of 1970 became law.

¹¹U.S. Congress, Federal Register, Safety and Health Standards, Volume 34, Number 96, Washington, D.C. 1969, p. 1.

CHAPTER II

OSHA BACKGROUND AND OPERATION

OSHA is "without question the most sweeping job safety and health legislation in the history of the United States, with heavy responsibility on Corporation management."¹² OSHA covers 57 million workers in over four million businesses 'affecting commerce.' OSHA's goal is to assure "so far as possible every working man and woman in the nation safe and healthful working conditions."¹³ OSHA requires every employer to provide a job environment that is 'free' from recognized hazards that cause or are 'likely' to cause death or serious physical harm.¹⁴

Definitions

"Recognized hazards" are defined in the congressional record as those which can be detected by the common human senses, unaided by testing devices, and which are

¹²Dan Peterson, The OSHA Compliance Manual, (McGraw-Hill Book Company, 1979), p. 1.

¹³Ibid, p. 2.

¹⁴Robert Stewart Smith, The Occupational Safety and Health Act. It's Goals and It's Achievements, American Enterprise Institute for Public Policy Research, Washington, D.C., 1976, p. 10.

generally known in the industry to be hazards.¹⁵ A firm can be penalized under the "general duty" clause only if the unsafe condition has been cited by an inspector and the employer has refused to correct it in the specified time. The harm to be protected against is physical, not emotional harm. The entire responsibility for compliance with the act is placed on employers.

Safety hazards are defined as those aspects of the work environment which can cause burns, electric shock, cuts, bruises, sprains, broken bones, loss of limbs, eyesight or hearing. Health hazards are defined as toxic and carcinogenic chemicals and dusts often in combination with noise, heat and other forms of stress. Physical and biological agents occurring through the senses by absorption through the skin, intake into the digestive tract via the mouth, or by inhalation into the lungs. Results in respiratory disease, heart disease, cancer, neurological disorder, poisoning, or shortened life expectancy due to general physiological deterioration.¹⁶

On the day that OSHA became effective, Mr. George

¹⁵Nicholas Ashford, Crisis in the Workplace: Occupational Disease and Injury, (The MIT Press, Cambridge, Massachusetts, 1976), p. 14.

¹⁶"The Safety Law Without Bite", Business Week, April 24, 1971, p. 73.

C. Guenther, the new Assistant Secretary of Labor for Occupational Safety and Health, said that while he had no standards to enforce at the present time, "they were being prepared and would be ready in weeks."¹⁷ Until that time National Consensus Standards, the standards of the Walsh-Healy Public Contracts Act and the McNamara-O'Hara Service Contract Act were to be enforced.

'National consensus standard' means any standard or modification thereof which (1) has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary of Labor that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded an opportunity for diverse views to be considered, and (3) has been designated as such a standard by the Secretary or the Assistant Secretary, after consultation with other appropriate Federal agencies.¹⁸

Those organizations recognized as contributing to the library of safety and health standards were listed in the Walsh-Healy Public Contracts Act as follows:

Subpart B - General Safety and
Health Standards
50-204.2 General safety and health
standards; incorporation by ref-
erence.

¹⁷U.S. Congress, Federal Register, Safety and Health Standards, Volume 34, Number 96, Washington, D.C., 1969, p. 2.

¹⁸Ibid

(a) Every contractor shall protect the safety and health of his employees by complying with the applicable standards, specifications, and codes developed and published by the following organizations:

United States of American Standards Institute (American Standards Association).

National Fire Protection Association.

American Society of Mechanical Engineers.

American Society for Testing and Materials.

United States Governmental Agencies, including by way of illustration the following publications of the indicated agencies:

(1) U.S. Department of Labor

Title 29 (CFR):

Part 1501 - Safety and Health Regulations for Ship Repairing.

Part 1502 - Safety and Health Regulations for Shipbuilding.

Part 1503 - Safety and Health Regulations for Shipbreaking.

Part 1504 - Safety and Health Regulations for Longshoring.

(2) U.S. Department of Interior, Bureau of Mines

(i) Safety Code for Bituminous Lignite Mines of the United States, Part I - Underground Mines, and Part II - Strip Mines.

(ii) Safety Code for Anthracite Mines of the United States, Part I - Underground Mines, and Part II - Strip Mines.

(iii) Safety Standards for Surface Auger Mining.

(iv) Respiratory Protective Devices Approved by the Bureau of Mines, Information Circular 8281.

(3) U.S. Department of Transportation.

49 CFR 171-179 and 14 CFR 103 Hazardous materials regulation - Transportation of compressed gases.

(4) U.S. Department of Health, Education, and Welfare, Public Health Service.

(i) Publication No. 24 - Manual of Individual Water Supply Systems.

(ii) Publication No. 526 - Manual of Septic-Tank Practices.

(iii) Publication No. 546 - The Vending of Food and Beverages.

(iv) Publication No. 934 - Food Service Sanitation Manual.

(v) Publication No. 956 - Drinking Water Standards.

(vi) Publication No. 1183 - A Sanitary Standard for Manufactured Ice.

(vii) Publication No. 1518 - Working with Silver Solder.

(5) U.S. Department of Defense

(i) AFM 127-100 Air Force - Explosives Safety Manual.

(ii) AMCR 385-224 - Army Material Command - AMC Safety Manual.

(iii) NAVORD OP5 - Navy - Ammunition Ashore, Handling, Stowing and Shipping.

(6) U.S. Department of Agriculture

Respiratory Devices for Protection against Certain Pesticides - ARS 33-76-2.¹⁹

During the period of time between OSHA becoming law and OSHA actually having its own standards to enforce, private enterprise feared politically influential

¹⁹"Warning, Safety Hazard", Nation's Business, June, 1970, p. 12.

labor unions would be able to persuade the Labor Department into harassing firms that unions were having trouble organizing or bargaining with. Automation was another cause for concern. Management feared efficient, labor saving machines would be ruled as unsafe, thereby slowing the shift away from labor intensive machinery.

Safety experts were attempting to point out that private enterprise in the United States had achieved a far safer workplace accident record than had European industries which had been government controlled for years. In the words of J.S. Queener of DuPont, "The fact is that the average American is safer at a workplace than he is at home, on the highway, or at play. It is remarkable that in the greatest industrial nation in the world, less than ten percent of all accidental deaths occur on the job."²⁰ By this time these efforts were, in reality, too little, too late; consequently having no effect.

Responsibilities and Penalties

The Occupational Safety and Health Act of 1970 not only makes it mandatory for every employer to keep his place of employment "free from the hazards that are likely to cause death or serious harm to his employees,"²¹

²⁰"Warning, Safety Hazard", Nation's Business, June, 1970, p. 12.

²¹Robert Stewart Smith, The Occupational Safety and Health Act. Its Goals and Its Achievements. American Enterprise Institute for Public Policy Research, Washington D.C., 1976, p. 9.

but also establishes a federal agency to enforce the law and authorizes the issuance of safety and health standards.

An OSHA inspector may enter a place of business for the purpose of examining working conditions, machinery, devices, equipment and material. The inspector will show up unannounced. Inspectors may enter any establishment at any reasonable time without delay or prior notice. The inspector may talk to anyone; he may inspect whatever he wishes. Criminal penalties are rewarded to anyone providing unauthorized advance notice of an inspector. Any employee has the right to contact the Labor Department charging safety violations. Inspectors have the authority to privately interview any employee. Employers cannot discriminate against an employee who has contacted the Labor Department. If, after the inspection, a violation is found to exist, the company will be issued a 'citation' describing the nature of the violation and a prescribed time in which to remedy it. If the violation is of an extremely hazardous nature, the employer may be forbidden to use a particular machine or substance, or the business may have to close down a particular area of operation.²² OSHA priorities for investigations are; 1) fatality or catastrophe, 2)

²²Dan Peterson, The OSHA Compliance Manual, (McGraw-Hill Book Company, 1979), p. 7-9.

valid complaints from employees, 3) those industries with the worst safety records nationally, i.e. longshoring, lumber, roofing, sheetmetal, meat, transportation, asbestos, silica, lead, cotton dust, and carbon monoxide, 4) general.²³ If an OSHA compliance officer finds a violation which presents an "imminent danger" he may seek a court order requesting a complete shutdown. Records must be kept and updated for five years of all work related deaths, injuries, and illnesses. Minor injuries that require only first-aid treatment and do not involve medical treatment, restriction of work or transfer to another job do not require records. Reports are required from these records and are sent to one of OSHA's fifty-two area offices or one of ten regional offices. Penalties are severe. A citation could lead to a fine of up to \$1,000. Willful violations carry a \$10,000 penalty. Not correcting a violation within the allotted time can cost \$1,000 per day per citation until the violation is corrected. If an employee dies as the result of a willful violation, it may mean a fine of up to \$10,000 and jail for up to six months. Making false statements to an

²³Dan Peterson, The OSHA Compliance Manual, (McGraw-Hill Book Company, 1979), p. 2.

OSHA inspector can also cost \$10,000 with the six month jail term. Violating posting requirements costs \$1,000. Killing an OSHA inspector carries a life imprisonment penalty. Repeat violations double the initial maximum penalties.²⁴

Every employer is obliged to be familiar with the standards which apply to him. For a business to keep up with current standards is an ongoing process. Failure to comply results in the stiff fines and possible imprisonment mentioned earlier. On May 29, 1971 the Secretary of Labor established the first group of OSHA standards with revisions and changes to occur on an annual basis.

OSHA Organization

The Occupational Safety and Health Act of 1970 actually established three federal agencies. OSHA itself was created to promulgate and enforce occupational safety and health standards. The Occupational Safety and Health Review Commission is a totally independent establishment of the Executive Branch of Government. The Review Commission adjudicates disputes between employers, employees, and the Secretary of Labor. The Review Commission is not connected in any way with the

²⁴Dan Peterson, The OSHA Compliance Manual, (McGraw-Hill Book Company, 1979), p. 5.

Department of Labor or the Occupational Safety and Health Administration (OSHA). There are three Commission Members who are appointed by the President of the United States for six-year terms and forty-four Administrative Law Judges who have career tenure. The Judges hold hearings and decide contests arising under the Occupational Safety and Health Act of 1970. The Judges' decisions are reviewed and the Commission Members have the authority to change those decisions.²⁵ The function of the National Institute for Occupational Safety and Health is to develop and establish recommended occupational safety and health standards, conduct research, experiments and demonstrations relating to occupational safety and health. The National Institute for Occupational Safety and Health is part of the Department of Health, Education and Welfare.²⁶

Inspections must be complete and impartial with no advance warning. A company cannot invite OSHA representatives to inspect a plant for the purpose of providing advise or making suggestions. OSHA is under no requirement to provide businesses with ways of complying with OSHA safety and health standards.

²⁵Rules of Procedure, Occupational Safety and Health Review Commission, May, 1978.

²⁶Ibid

Compliance Officers only note violations. Solutions are not the responsibility of OSHA.

The law provides for sanctions against an employer who does not follow OSHA's guidelines. There is no provision for penalizing an employee for failure to comply with his duty.

OSHA Methodology

"Your employer has been cited by the Secretary of Labor for violation of the Occupational Safety and Health Act of 1970."²⁷

What is happening? When an OSHA Compliance Officer inspects your facility he will note any conditions which he "believes to be in violation" of the law. The Compliance Officer then returns to his office to discuss what he has noted with his superiors. During this meeting a decision is made as to whether a Citation should be issued, degree of penalty if any and abatement date.

Upon receipt of a Citation the employer has two courses of action. First, he can agree to the Notification of Penalty, correct the condition and pay the penalty. As his second course of action he may elect to contest any or all of the charges;

²⁷Employer Responsibilities and Courses of Action Following an OSHA Inspection, U.S. Department of Labor, 1976.

i.e., citation, penalty, abatement date. In any event the citation must be posted near the place where the violation occurred for the purpose of notifying affected employees. The citation must remain posted for three working days or until the violation is corrected; whichever is longer.²⁸

Any employer who wishes to contest must notify the OSHA Area Director in writing within fifteen working days after receipt of the penalty notification. OSHA specifically states that the Notice of Contest must be made in good faith. Contests filed solely to avoid abatement responsibilities or payment penalties are not considered in good faith. The notice must clearly describe what is being contested - the citation, the penalty, the abatement date or a combination of the three. The proper contest of an item suspends your obligation to abate and/or pay until the item contested has been judicially resolved. If only specific items on the citation are contested, the other items must be corrected and the corresponding penalties paid. Once the Notice of Contest has been filed correctly the OSHA Area Director has

²⁸Employer Responsibilities and Courses of Action Following an OSHA Inspection, U.S. Department of Labor, 1976

twenty days to forward the case to the Occupational Safety and Health Review Commission. The Commission then assigns the case to an administrative judge. A hearing will be scheduled. The hearing will involve all of the elements of a normal trial. Once the administrative judge has ruled, any party to the case may request a further review by the Review Commission. During these procedures the Department of Labor has the burden of proof.²⁹

Abatement dates are assigned on the basis of the best available information at the time. When uncontrollable events or other circumstances prevent meeting the abatement date, a petition for modification of abatement may be necessary. The petition for modification is filed with the OSHA Area Director not later than the day on which abatement was to have been completed. The Secretary of Labor will not grant the petition if the affected employees file an objection.

Any party not satisfied or wronged by a final order of the Commission that was issued after a case has been initiated by the filing of a Notice of Contest may take the case to an appropriate United States Court of Appeals. Employers "likely to suffer sub-

²⁹Employer Responsibilities and Courses of Action Following an OSHA Inspection, U.S. Department of Labor, 1976.

stantial economic injury" through complying with OSHA standards may be eligible for Small Business Administration loans.³⁰

CHAPTER III

FINDINGS AND ANALYSIS OF FINDINGS

Initial Results

Initially, Labor Secretary James D. Hodgson concentrated his safety compliance efforts on those industries with historically poor records. In 1972 OSHA was attempting to enforce 22,000 safety and health standards. According to Hodgson, "We will make every effort to encourage and obtain voluntary compliance before resorting to the enforcement features of the act."³¹ By April 30, 1972, George C. Guenther and his staff of 500 inspectors found 5,791 of 23,662 workplaces inspected free of hazards. During that period 75,864 violations were charged against 18,449 employers. \$1.7 million in fines had been levied.³²

³⁰Employer Responsibilities and Courses of Action Following an OSHA Inspection, U.S. Department of Labor, 1976.

³¹"Reaching to Police Safety Practices", Business Week, May 26, 1973, p. 27.

³²Ibid

In 1973 the Economic Department of McGraw Hill Publicist, released the first information ever collected about the cost of business efforts to conform with the 1970 law. \$3.2 billion was spent in 1973 to improve safety and health conditions. This represented a 26 percent increase over 1972. Three percent of the capital spending in industry was being channeled into safety and health. The iron and steel industry was spending \$193 million, or 12.3 percent of their capital spending.³³

For years OSHA relied on a policy of random inspections to assist its relatively small inspection force in covering all the work places in the country. 1.3 percent of all eligible work sites were inspected in Fiscal Year 1973, implying that the typical employer will see an OSHA inspector once every 77 years - or about as often as we see Haley's comet.³⁴ Inspectors do not discover or cite all violations in the plants they inspect. 2,100 safety standards apply to general industry, 2,300 more pertain to special industry, i.e., longshoring, construction. In May 1974, only 636 of the 4,400 safety standards were cited even once. In Fiscal Year 1973 twenty-two standards, or one half of

³³"The Stifling Costs of Regulation", Business Week, November 6, 1978, p. 13.

³⁴Ibid

one percent of the total number of standards accounted for 42 percent of all cited violations.³⁵ The same standards seem to be the ones most noticed from industry to industry; 1) electrical code violations, 2) abrasive wheel machinery, 3) general requirements for all machines. The average non-complying establishment is fined \$25 per violation. 98.7 percent of all violations are deemed to be nonserious.³⁶ According to then Assistant Secretary of Labor Guenther, many of the violations enforced by OSHA were the result of "inappropriate standards written into the law" and "not actually related to safety and health."³⁷

Business Concerns

Shortly after OSHA began performing inspections the business community, especially small business, began complaining of harassment, saying that the cost of complying with OSHA safety and health standards was economically prohibitive. Critics of OSHA were charging that the agency had abused and misused its powers to the extent that the entire concept of safety and health standards had been trivialized. OSHA was enforcing

³⁵"Union's Snipe at Job Safety Laws", Business Week, July 22, 1972, p. 74.

³⁶Ibid, p. 75.

³⁷Ibid, p. 75.

standards which required such things as U-shaped toilet seats in work site restrooms and not allowing ice in drinks. OSHA Compliance Officers had gone so far as to close down a small husband and wife operated grocery store in Iowa until the owner installed separate men's and women's restrooms.³⁸ OSHA published and distributed a pamphlet warning farmers of the dangers of slipping on cow manure. The OSHA definition of an exit; "that portion of a means of egress which is separated from all other spaces of the building or structure by construction or equipment as required in the subpart to provide a protected way of travel to the exit discharge."³⁹ In 1977 OSHA was operating with a budget of about \$125 million. The National Institute for Occupational Safety and Health had another \$35 million. OSHA employed 1,250 safety and health inspectors. Of the 200,000 inspections OSHA completed in 1977, 90 percent dealt with safety standards.⁴⁰ Criticism was mounting over the enforcement of standards which were totally irrelevant requirements and its failure to sufficiently weigh the enormous costs imposed by those standards.

³⁸John Mendeluff, Regulating Safety: An Economic and Political Analysis of OSHA Policy, (The MIT Press, Cambridge, Massachusetts, 1979), p. 3.

³⁹Ibid, p. 16.

⁴⁰Ibid, p. 20.

During the evolution of what eventually became the Occupational Safety and Health Act of 1970, the subject of 'costs' is never mentioned. The word 'feasible' is as close as anyone ever came to discussing this critically important topic. There are several reasons why this occurred. During the ongoing battle and discussions leading to the passage of a safety and health bill, members of Congress did not want to handle the very political issue of 'putting a price tag on human life.' At the same time business lobbyists were trying hard to show that tough regulations were not needed at all. A key part of their strategy was to show business leaders as people who were as concerned with safety as anyone. A hard line on the cost of complying with OSHA standards did not fit with that strategy.⁴¹ Labor Leaders certainly did not want costs mentioned. After OSHA had been operating for a few years these groups began to question past decisions. During congressional hearings Republican congressmen have occasionally placed union witnesses on the spot by asking why, if these problems of occupational safety and health are so great, the union had done

⁴¹John Mendeluff, Regulating Safety: An Economic and Political Analysis of OSHA Policy, (The MIT Press, Cambridge, Massachusetts, 1979) p. 22.

so little toward winning contract protections. Historically, organized labor has not emphasized safety and health in collective bargaining for several reasons. Worker concern for inflation and economic problems often preempts safety and health concerns.⁴² The fear that jobs will be lost if strict safety and health standards are introduced has dominated their thinking. Also, with the advent of OSHA, organized labor figured it could leave those issues to the Federal Government. One union safety director admitted that, "in negotiating a contract it appears that safety and health clauses come after the coffee break."⁴³ The fact is that many union leaders fear their own members would not be willing to trade wage and benefit packages for safety provisions.

Today, OSHA compliance and safety management are not the same. Complying with standards and documentation procedures has become the number one priority under OSHA.⁴⁴ The regulations have become so broad and all inclusive that there is no way in which a company can be in complete compliance with all aspects of the law

⁴²"Union's Snipe at Job Safety Laws", Business Week, July 22, 1972, p. 75.

⁴³Ibid, p. 76.

⁴⁴"A New Bid to Curb OSHA", Dun's Review, December, 1979, p. 97.

at any one time.⁴⁵

Of primary concern to business is OSHA's refusal in allowing personal protective equipment be worn to prevent harmful exposure to health standards and its insistence upon using engineering controls to achieve this protection. As an example; for protecting against the harmful affects of cotton dust OSHA prohibits the use of face masks and requires the use of engineering methods to meet clean air standards. Reason: Respirators are uncomfortable, workers cannot be trusted to wear them.⁴⁶ This is yet another case of OSHA refusing to address the question of costs versus benefits toward the various methods of compliance. Again, many of the existing consensus standards are irrelevant and simply not effective when justifying their costs. There is no defined consensus regarding the measurement to be used when determining the feasibility of enforcing engineering controls - the same is true for determining the feasibility of any standard. The end result of this confusion has been the unwillingness of OSHA leaders to allow Compliance Officers and investigators to exercise discretion, good

⁴⁵"A New Bid to Curb OSHA", Dun's Review, December 1979, p. 97.

⁴⁶"The Stifling Costs of Regulation", Business Week, November 6, 1978, p. 14.

judgement or professionalism in carrying out their duties. Union leaders fear inspectors would use discretion to weaken enforcement against serious as well as minor standards. Consequently, OSHA requires strict enforcement of all regulations - no matter how trivial.⁴⁷

According to John G. Tern (R-TX), "It is not in the interest of either the public safety or the public welfare to treat all businesses as if they were identical. It is because OSHA considers the corner grocery store and General Motors the same that complaints have been received by the thousands. It is unrealistic to provide the same types of standards to those types of concerns."⁴⁸ In the words of Paul W. McAvoy, former Economic Advisor to President Gerald Ford, "OSHA has gone to far while accomplishing too little."⁴⁹ There has been an inability to demonstrate the impact of OSHA on the basis of reduced accident rates."⁵⁰ John H.

⁴⁶"The Stifling Costs of Regulation", Business Week, November 6, 1978, p. 14.

⁴⁷"Impact of Job Safety Law on Employers and Workers", U.S. News, January 11, 1971, p. 80.

⁴⁸"Why Nobody Wants to Listen to OSHA", Business Week, June 14, 1976, p. 65.

⁴⁹"Accident Statistics That Jolted OSHA", Business Week, December 11, 1978, p. 62.

⁵⁰"The High Price of Job Safety", Business Week, May 26, 1973, p. 27.

Ahern, Director of Safety for General Motors finds, "There is no direct correlation between their (OSHA) regulations and the actual accidents which do occur. General Motors spent \$79 million and the equivalent of 1,100 man-years to satisfy OSHA requirements in 1974 but to no avail. We had a good safety program going long before anybody ever heard of OSHA, and we haven't seen any effect from all the money that's been spent, so far as any reduction in our accident rate is concerned."⁵¹ A Wisconsin study found that most occupational injuries result from some behavioral problem or transitory hazard, and that only one-quarter of all injuries involve a permanent physical hazard capable of control by a standard setting and inspection program.⁵² A New York study found that only 36 percent of all occupational injuries resulted from hazardous conditions. This study concluded that even the best standards could only reduce work injuries by at most one-third to one-quarter.⁵³

⁵¹"The Safety Act's Hidden Bite", Business Week, January 9, 1971, p. 73.

⁵²"Why Nobody Wants to Listen to OSHA", Business Week, June 14, 1976, p. 66.

⁵³Ibid, p. 67.

The target industry program has had no effect on injury rates. In 1976 the Council of Economic Advisors reported, "OSHA had not perceptibly reduced injury rates in the industries in which inspections had been targeted," and that "while ineffective, OSHA has been extremely costly to industry."⁵⁴ To the extent that resources are required to be spent for the correction of "hazards which do not cause injury, the standards are unproductive and wasteful. Standards do not necessarily require the least-cost, nor the most effective method of injury reduction."⁵⁵

CHAPTER IV

SUMMARY AND CONCLUSIONS

One striking anomaly in OSHA policy is that although labor and management leaders concurred in the view that occupational diseases presented the most serious case for government action, the actual deployment of OSHA's resources has heavily emphasized safety rather than health. The key distinction is not that workers know more about safety than they do about health risks;

⁵⁴"The Crushing Cost of Safety", Dun's Review, January, 1972, p. 53

⁵⁵Ibid

it is rather that the experts know a great deal more about health than workers do but not much more about safety. OSHA's health standards provide a conceptually sound way to approach health hazards. The OSHA procedural requirements increase the flow of information to workers about the hazards they face, facilitating the proper working of market processes. The value of OSHA's safety program is more doubtful. One of the most serious questions about OSHA is whether the enforcement of safety standards constitutes a desirable form of regulation and whether OSHA properly weighs the costs and benefits of protection.⁵⁶ The standards enforcement strategy has several weaknesses as a method for preventing injuries. Most workplace injuries are not caused by violations of standards, even fewer are caused by violations that inspectors can detect.⁵⁷

Alternatives to OSHA

The reason the free market results in too much workplace injury and illness is because market signals or incentives are wrong from society's point of view. Employer's are not held financially accountable for

⁵⁶"Why Nobody Wants to Listen to OSHA", Business Week, June 14, 1976, p. 66.

⁵⁷Ibid

the full human and social consequences of their failure to provide safe and healthful working conditions. Business to date has had insufficient incentive to improve job safety and health. In the absence of some form of compulsion through OSHA-like standards or through collective bargaining agreements, it is unrealistic to expect individual employers to assume what they view to be competitively disadvantageous cost.⁵⁸

From an economists point of view, the production of increased safety and health is costly because it uses resources that can also be used to increase human welfare in other ways. Devoting more resources to occupational safety and health only makes sense if those resources will generate greater additions to human welfare when used for safety and health than when used otherwise.⁵⁹ In a society which values individual freedom, people themselves should be the judge of what alternative allocation of resources makes them happiest. An employer will continue to purchase safety resources until the added savings from injury reduction are just equal to the cost of the resources necessary to generate the

⁵⁸"The Crushing Cost of Safety", Dun's Review, January, 1972, p. 54.

⁵⁹Ibid

reduction. What evidence there is suggests that private employers have pushed injury reduction to the point where those injuries which remain are relatively costly to eliminate.⁶⁰ As an example, OSHA has been much more vigorous in its safety inspection activities than it has in its health inspections. Society is likely to derive much larger gains from a program emphasizing occupational health than from a program emphasizing occupational safety. The private market for occupational health functions less effectively than the private market for occupational safety.⁶¹

The OSHA standards approach is inferior to an injury tax concept. OSHA enforcement of safety standards is not likely to reduce injuries at least cost. 1) Most injuries are not related to the violation of OSHA standards and would occur despite perfect compliance, i.e., strains and over-exertion cause one-quarter to one-third of all lost time injuries but are unaffected by standards. OSHA provides no incentive for injury prevention. OSHA efforts are toward complying with standards. 2) For those injuries for

⁶⁰"A Troubled OSHA Seeks Relief", Business Week, April 12, 1976, p. 95

⁶¹ Ibid

which compliance with standards is relevant, totally different methods may be preferable to changes in the physical environment. 3) Even when physical standards are the best method, the particular OSHA standard may not be the least costly or best. Greater use of performance as opposed to specifications would be desirable.⁶² An injury tax would give employers an incentive to prevent all types of injuries. The tax would raise the marginal benefits of injury prevention. The crucial advantage to an injury tax is that an employer will usually have better information about the least costly methods for preventing injuries at his workplace than the federal government.

Conclusion

A safety psychology needs to be developed which follows the principle that accidents are caused by people - not things, OSHA began with the blessing of Congress yet proved difficult to implement. OSHA was overly tough yet entirely too weak. OSHA produced inconsistencies which made it vulnerable to criticism from all sides. "There is no fundamental agreement either on the act's goals or on the practical methods of balancing considerations of cost."⁶³ Studies argue that the

⁶²"Storm Tossed OSHA", The New Republic, May 17, 1980, p. 12.

safety and health mandate of the Occupational Safety and Health Act of 1970 is inconsistent with the goal of promoting the general welfare. The current program is likely to be ineffective in reducing injuries. The standards are so unrelated to the major causes of occupational injury that even perfect compliance would have limited effects on injuries.⁶⁴ The design of policy to bring about improvements in occupational environments must rely upon four sets of policy instruments: 1) Law, 2) Market incentives, 3) The generation, dissemination and utilization of knowledge, 4) The development of personnel in the various professions, in labor unions, in management and in government with the requisite knowledge of the issues.⁶⁵

The method of enforcement enshrined in the Occupational Safety and Health Act of 1970 is a relatively costly way to prevent injuries. It has not proved a very effective way either. Unless program changes are made that allow injuries and illnesses to be prevented at lower cost, the burden that OSHA

⁶⁴What Every Supervisor Must Know About the New Occupational Safety and Health Act, Bureau of Business Practice, Inc., 1971, p. 39.

⁶⁵Ibid

imposes will be far greater than it needs to be. Ironically, the actual effects of OSHA in reducing occupational injuries may be virtually nil.

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