

# **Unlocking OSHA'S Potential**

## **An Inspection Strategy for the 1990s**

LESLIE I. BODEN

*Boston University School of Public Health  
Environmental Health Section  
Boston, Massachusetts 02118*

### **OSHA'S IMPACT ON HEALTH AND SAFETY**

Studies of the Occupational Safety and Health Administration (OSHA) consistently indicate that OSHA inspections have had little or no impact on workplace injury rates. Studies by Smith<sup>1</sup> and Viscusi<sup>2</sup> were unable to detect significant improvements in injury rates after OSHA was established. Even positive studies indicate only small reductions in injury rates related to OSHA enforcement. Mendeloff,<sup>3</sup> in an analysis of California's state-enforced program, estimated that safety regulation led to a 2 to 3% decline in lost-workday injuries. Smith<sup>4</sup> compared 1973 rates of firms inspected early in the year with those inspected near the end of the year and found that the early inspections were associated with a 7% decline in injury rates. However, early inspections apparently produced only a 2% decline in 1974. McCaffrey<sup>5</sup> repeated Smith's study for the 1976-1978 time period and was unable to detect any decline in injury rates associated with early inspection.

It is more difficult to evaluate OSHA's impact on health hazards. Mendeloff's analysis of inspectors' measurements of exposure to trichloroethylene and silica suggests that they have not changed over time, and evidence on lead exposures is mixed. Exposures to vinyl chloride and asbestos have declined since the promulgation of OSHA standards for these substances.<sup>6</sup> However, the vinyl chloride standard was published shortly after the cancer risk of this substance was established, and after asbestos manufacturers began to suffer multimillion-dollar liability losses shortly after the 1972 asbestos standard was issued. Both of these nonregulatory factors could have accounted for the observed reduction in exposures.

Even though each of the cited studies has its deficiencies, taken together, they present a convincing story. OSHA has not come close to the expectations of one of its early sponsors, Congressman William A. Steiger, who expected a 50% reduction of injury rates as a consequence of the Act's passage.<sup>7</sup> OSHA has been criticized for weaknesses in its standards, inadequate expertise, poor management, and deficient enforcement policies. Although there is certainly room for improvement in its current policies, even an expert agency with a well-managed inspection program would probably have little impact on workplace conditions.

### **OSHA'S FUNDAMENTAL LIMITATIONS**

OSHA's safety and health inspectors periodically pay unannounced visits to America's workplaces. If inspectors find a violation of the regulations, they issue

a citation and impose a penalty, which is supposed to reflect the seriousness of the danger to workers' health and safety. Employers may contest the citation, but in most instances they must pay the penalty and correct the hazard by a given date.

The basic reason for OSHA's ineffectiveness is its excessive reliance on enforcement of health and safety standards. OSHA operates on the theory that the threat of sanctions will lead most employers to comply with its regulations and that the occasional recalcitrant employer will be caught and compelled to come into compliance as well. A brief look at the Agency's task and its resources suggests why it cannot achieve a substantial reduction in workplace hazards by simply enforcing standards. OSHA's 1,100 inspectors are responsible for protecting the health and safety of 50 million workers at 2 million workplaces. (The rest are covered by state programs.) In fiscal 1987, the agency conducted about 60,000 inspections. In other words, OSHA inspected 3% of covered workplaces. Even if we disregard the less hazardous sectors of the economy (retail, personal, and business services) and put aside consideration of the problematic agricultural sector, OSHA inspects fewer than 20% of all manufacturing plants and construction sites each year.

Because firms can expect to see an inspector less than once every 5 years, the impact of enforcement activity is necessarily limited. Most firms will not fear imminent discovery of hazardous conditions. Moreover, health and safety conditions change from day to day as a result of random events, changes in production processes, and the presence or absence of adequate maintenance. These factors mean that an OSHA inspection every 5 years can be expected to uncover only highly visible and persistent health and safety hazards. Even if the inspection corrects all apparent problems, changing practices and inadequate maintenance may soon erase the benefits.<sup>8</sup>

Although hazard reduction in inspected workplaces is constrained by the necessity of continual vigilance, OSHA's deterrent effect is even more limited. Even for serious violations (those that may result in death or serious physical harm), OSHA's average penalty has hovered around \$200 in recent years. Given that manufacturing and construction sites have less than a 20% chance of being inspected, the average employer would anticipate paying that \$200 amount over a 5-year period. For violations that cost more than \$40 per year to correct, employers would save money doing nothing until after they were inspected.

How could the impact of OSHA's enforcement activities on "voluntary" compliance be significantly increased? There are two obvious ways: either penalties could be raised substantially or inspection activities could be stepped up. Neither alternative is realistic. Consider a serious violation of the asbestos standard that costs \$5,000 a year to correct. To convince an employer with a 20% chance of being inspected in any given year that he should voluntarily comply, the employer would have to expect at least a \$25,000 fine—and this assumes that the violation would be detected by the inspector. Such penalties are not permitted under the OSHA legislation.

Neither are more frequent inspections the answer. The Occupational Safety and Health Act sets a maximum penalty of \$1,000 per serious violation. Employers with a serious violation costing \$5,000 a year to correct would therefore have to expect more than five inspections (and thus more than \$5,000 in fines) a year before they would comply voluntarily. OSHA inspection operations capable of deterring such violations would have to exceed 25 times their current level. The resources necessary to inspect at such a level, even if the most hazardous workplaces were carefully targeted, are certainly not consistent with a balanced Federal budget.

### INVOLVING WORKERS IN INSPECTION

To increase its impact, OSHA needs allies to monitor workplace conditions and to provide employers with additional incentives to reduce hazards. Occupational safety and health professionals can help in this effort, but they are not present in every workplace. When they are, they often face a conflict between their obligation to protect worker health and their employers' needs to increase profits.<sup>9,10</sup> OSHA's logical allies are the workers who are at risk. Workers are always present at the work site, and, because they are the prime beneficiaries of efforts to improve workplace safety, it seems reasonable that they have a substantial role in achieving that objective.

When it designed the Occupational Safety and Health Act of 1970, Congress was aware of the importance of worker involvement. The Act requires OSHA to inspect a workplace when there is a formal (written) worker complaint about hazardous conditions. During an inspection of a unionized workplace, a worker representative accompanies the OSHA compliance officer; when there is no union, the compliance officer consults several workers. After the inspection, proposed citations, penalties, and abatement dates must be posted where employees can read them. Finally, the Act forbids employer discrimination against any worker participating in legal health and safety activities. As a matter of policy, OSHA had extended some of these rights in the late 1970s. At that time, OSHA promulgated a rule that required workers accompanying an inspector to be paid. OSHA also had a policy that all post-inspection conferences with employers were to be open to workers and their representatives. Both of these policies were rescinded during the Reagan years. Currently, OSHA can meet alone with an employer and agree to reduce penalties substantially. The workers' only right is to have the agreement explained to them.

If workers are to act as a citizen occupational safety and health inspection force, these rights must be extended. First, they must be trained in the recognition of occupational hazards and given information about the hazards in their place of employment. The OSHA Hazard Communication Standard has traveled a short distance toward the goal of adequate training and information. OSHA has provided funding for private-sector training and education through the New Directions Program, but this program was extremely limited in scope. A more recent effort funded by the National Institute of Environmental Health Sciences is confined to hazardous waste workers. Most worker-oriented occupational health and safety training programs have been developed by unions or by local grassroots coalitions, COSH groups (Committees for Occupational Safety and Health).<sup>11,12</sup>

A worker inspection program also requires arrangements to facilitate consultation between workers and their employers about reducing hazards. A natural setting for this is the joint labor-management health and safety committee. If joint committees are to act as a vehicle for worker inspection, every workplace over a minimum size should have such a committee. Committee members must be trained. They must have access to all information about current workplace hazards and should be able to personally observe any area of the workplace. They should also be informed in advance about the impact of planned changes in plant, equipment, processes, and chemicals. They should be paid for all committee work and have the right to bring expert consultants into the workplace. Worker members of the committee should be elected or appointed by their union or, if not represented by a union, elected by nonmanagement employees.

Knowledge about workplace conditions is not of itself sufficient for the com-

mittee to have a substantial impact on management's decisions. When management refuses to eliminate very hazardous conditions, committee members must be able to take action. The most simple and effective step is to shut down the operation until agreement can be reached or until OSHA can be called in to determine suitable remedial action. This creates an incentive for the firm to act quickly so that production can begin again. A related action that would both create extra safety incentives and remove workers from risk is to broaden the limited right to refuse unusually hazardous work currently available to workers.<sup>13-15</sup>

Some employers may be tempted to discipline workers who use these new rights to take part in health and safety decisions. Nothing will chill worker participation as effectively as the threat of job loss. As a consequence, vigorous enforcement of rules protecting workers from discrimination for health and safety activities is critical to the success of such a program. This would require a substantial new commitment by OSHA, because its record of investigating alleged discrimination and protecting workers' rights has been woefully inadequate.<sup>16,17</sup>

Some of these rights have already been obtained in labor-management contracts. For example, in many of the plants it represents, the United Automobile Workers Union has, among other rights, safety representatives and safety training paid for by the employer. The United Steelworkers of America, through many of its contracts, has established paid safety committee work and walkaround rights, as well as an internal procedure that links the right to refuse hazardous work with the safety committees. Such gains in only a few of the strongest and most committed unions are not adequate to address the problems we are discussing. There must be broader statutory rights for all workers. Greater worker authority in occupational safety and health is not an untried or impractical idea. Other countries have had considerable experience in this area. Two well-known examples are Sweden and Canada.

## SOME FOREIGN MODELS

### *Sweden*

Sweden has had a system of worker participation in occupational safety and health for decades. Currently, every workplace with five or more workers is required to have a safety steward, whereas those with at least 50 workers must have a joint labor-management safety committee. There are currently 110,000 safety stewards in Sweden.<sup>18</sup> Both safety stewards and safety committees are charged with providing safety information and training. They receive full pay while discharging their safety duties and receive special training. About 650,000 Swedish workers (more than 1 in 10) have received a basic work environment course, while an advanced course is given to 30,000 to 40,000 workers every year.<sup>19</sup>

In 1974, the Worker Protection Act gave union safety stewards the right to suspend an operation that is an "imminent and serious danger for employee life or health" until a government inspector arrives.<sup>20</sup> This right has been exercised an average of about 100 times per year over the last 15 years, but with declining frequency since 1979. Because Sweden's labor force is less than 5% that of the United States, this is equivalent to over 2,000 such actions annually in this country.

### *Canada*

In Canada, occupational safety and health regulation is primarily provincial in nature. All of Canada's provinces have provided for mandatory joint health and safety committees, and four (Ontario, Manitoba, Newfoundland, and Quebec) also have provisions for worker health and safety representatives. Provincial regulations require at least half the members of health and safety committees to be workers either elected by their fellow employees or appointed by their union. Committee members and health and safety representatives are paid for time spent performing their duties. In Saskatchewan, Manitoba, and Quebec, the employer must pay as well for attendance at approved training courses. Although committee powers vary by province, there are some common themes. Members of joint committees and health and safety representatives are typically entitled to receive information on worksite hazards, to receive and respond to worker complaints, to investigate serious accidents and hazardous conditions, to accompany a government inspector, to participate in the resolution of problems arising out of refusal to perform hazardous work, and to consult with experts. With the exception of the province of Quebec, committees can act only in an advisory capacity. In Quebec, joint health and safety committees have additional powers, giving them a central role in occupational safety and health planning. These include the right to choose the company physician, to approve the company occupational health and safety program, to develop health and safety training, and to select personal protective equipment.

In several Canadian provinces, workers receive substantially greater protection against discrimination for health and safety activity than in the United States. For example, a worker who has been engaged in occupational safety and health activities and is disciplined or fired is presumed to have suffered from illegal discrimination. The employer has the choice of proving otherwise or providing the worker with full compensation for lost wages.<sup>21</sup>

Finally, Canadian workers who refuse hazardous work are provided with a dispute-resolution procedure that is superior to that in the United States. When a Canadian worker refuses work and does not reach agreement with management that the job is sufficiently safe to warrant return, the worker or employer can call a government inspector. The inspector will either require the employer to correct the hazard or will determine that there is no unusual hazard and order the worker to return to the job. Thus, when the employer and worker disagree, the inspector acts as an impartial and expert arbitrator.<sup>21</sup> Our procedures are much slower and generally do not involve an independent examination of the disputed conditions by a government inspector.<sup>13</sup>

### RECENT ACTIVITY IN THE UNITED STATES

These ideas have received considerable attention in the United States over the past several years. The COSH groups have provided early leadership in this area. For example, in 1984, the Philadelphia Area Project on Occupational Safety and Health (PHILAPOSH), published *A Job Safety and Health Bill of Rights*.<sup>22</sup> Among the rights enumerated are: access to all health and safety information, payment for union-sponsored training, and the right to shut down dangerous operations. In some states, legislation has been drafted to attain greater worker involvement in abating hazards. The Pennsylvania Public Employee Occupational

Safety and Health Bill would require the establishment of joint health and safety committees with the right to investigate accidents and regularly inspect the workplace. Elsewhere, groups are considering submitting legislation that would require all but the smallest workplaces to have labor-management health and safety committees. Committee members would have access to health and safety information, annual training at the employer's expense, and the right to investigate work and hazards, to bring in outside consultants, to advance notice of any new processes, equipment, or chemicals to be introduced, to shut down hazardous operations until corrected or checked by OSHA, and to participate in meetings or agreements between government agencies and management. Attendees at a 1987 AFL-CIO national conference discussed mandatory joint health and safety committees, obligatory health and safety training for workers, and a strengthened right to refuse hazardous work.<sup>23</sup>

### CONCLUSION

Studies of the effectiveness of the Occupational Safety and Health Administration have uniformly shown little or no reduction in workplace injury rates. Although there is certainly room for improvement in its current policies, even an extremely well-managed agency would have limited impact. In the past, OSHA has used its small field staff to ensure that inspected employers are in compliance with health and safety standards. It has had a limited role in educating workers and employers and in supporting hazard surveillance and control activities by workers and their unions. If OSHA is to transcend its limitations, it must have a broader vision of its mandate. More effective regulation is possible if workers understand workplace hazards and supplement OSHA's inspection efforts.

OSHA can provide support for worker training, more stringent requirements for informing workers under existing right-to-know regulations, incentives for employers to involve workers and their unions in hazard reduction, greater opportunity for workers to participate in the inspection and hazard abatement process, and increased protection against discrimination for health and safety activities.

In addition, new laws and regulations could support increased worker involvement in workplace health and safety, using workers as a volunteer inspection force. Models exist in other countries, notably Canada and Sweden. Examples include statutory labor-management health and safety committees and the right of workers and their representatives to shut down hazardous processes and to refuse hazardous work.

Last and most important, the Federal government must take steps to reestablish workers' faith that OSHA will keep safety and health as its first priority. This good faith is necessary if OSHA is to receive the input from workers that it needs to be effective.

### REFERENCES

1. SMITH, R. S. 1979. The impact of OSHA inspections on manufacturing injury rates. *J. Human Resources* **14**: 145-170.
2. VISCUSI, W. K. 1979. The impact of occupational safety and health regulation. *Bell J. Economics* **10**: 117-140.
3. MENDELOFF, J. 1979. *Regulating Safety: An Economic and Political Analysis of Occupational Safety and Health Policy*. MIT Press. Cambridge, MA.

4. SMITH, R. S. 1979. The impact of OSHA inspections on manufacturing injury rates. *J. Human Resources* **14(2)**: 145-170.
5. MCCAFFREY, D. P. 1983. An assessment of OSHA's recent effects on injury rates. *J. Human Resources* **18**: 131-145.
6. U.S. CONGRESS, OFFICE OF TECHNOLOGY ASSESSMENT. 1985. Preventing Illness and Injury in the Workplace. :268. U.S. Government Printing Office, Washington, DC.
7. ZECKHAUSER, R. & A. NICHOLS. 1978. The Occupational Safety and Health Administration—An overview. *In* Study on Federal Regulation, Appendix to Vol. VI. U.S. Congress, Senate Committee on Governmental Affairs. :163-248. U.S. Government Printing Office. Washington, DC.
8. BODEN, L. E. & D. H. WEGMAN. 1978. Increasing OSHA's clout: Sixty million new inspectors. *Working Papers* **7**: 43-49.
9. WALTERS, V. 1982. Company doctors' perceptions of and responses to conflicting pressures from labor and management. *Social Problems* **30**: 1-12.
10. WALSH, D. C. 1987. Corporate Physicians: Between Medicine and Management. Yale University Press. New Haven, CT.
11. BERMAN, D. 1981. Grassroots coalitions in health and safety: The COSH groups. *Labor Studies J.* **6(1)**: 104-113.
12. LEVENSTEIN, C., L. I. BODEN & D. H. WEGMAN. 1984. COSH: A grass-roots public health movement. *Am. J. Public Health* **74**: 964-965.
13. ASHFORD, N. A. & J. KATZ. 1977. Unsafe working conditions: Employee rights under the Labor Management Relations Act and the Occupational Safety & Health Act. *Notre Dame Lawyer* **52**: 802-836.
14. GROSS, J. A. & P. A. GREENFIELD. 1985. Arbitral value judgments in health and safety disputes: Management rights over workers rights. *Buffalo Law Rev.* **34**: 645-691.
15. BACOW, L. S. 1980. Bargaining for Job Safety and Health. The MIT Press. Cambridge, MA.
16. MINTZ, B. W. 1984. OSHA: History, Law, and Policy. :606-607. Bureau of National Affairs. Washington, DC.
17. MCMANUS, J. M. 1987. Deadly Dilemma. Wisconsin Committee on Occupational Safety & Health. Milwaukee, WI.
18. SODERLUND, S. 1987. Working Environment in Sweden. The Swedish Work Environment Fund, Stockholm.
19. 1987. Occupational Safety and Health in Sweden. The Swedish Institute, Stockholm.
20. KELMAN, S. 1981. Regulating America, Regulating Sweden. M.I.T Press. Cambridge, MA.
21. NASH, M. I. 1983. Canadian Occupational Health & Safety Law Handbook. CCH Canadian Ltd. Don Mills, Ontario.
22. ENGLER, R. 1984. A Job Safety and Health Bill of Rights. Philadelphia Area Project on Occupational Safety and Health. Philadelphia, PA.
23. WRIGHT, M. 1987. Discussion paper on New Laws and Worker Rights. AFL-CIO National Health and Safety Conference, Nashville, TN.