

Workplace Regulation Gone Wrong

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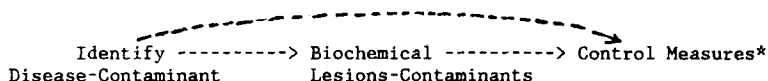
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Although the title of this presentation implies a problem, it must be pointed out that many interest groups in this country do not believe there is anything wrong. A deregulatory movement—political, well-organized, and well-funded—prefers fewer standards to cover workplaces, a smaller enforcement activity, and generally a reversion to the voluntary effort that characterized workplace safety and health activities before passage of the Occupational Safety and Health Act of 1970.

Prevention of occupational disease requires control measures in the work environment that either eliminate the physical or chemical agent or reduce the level to a point where men and women can work without incurring disease. This concept of prevention is at the heart of the Occupational Safety and Health Act. A diagram of the concepts is presented in FIGURE 1. The identification of disease and contaminants responsible for the disease is the research activity of the academic community, National Institute of Occupational Safety and Health, other NIH institutes, industry, and labor. The result of such activity all too often ends after the first step: the identification of disease. However, the route to determining mechanisms of action that pinpoint the specific biochemical lesion may be a high-priority activity and consume everyone's attention. An excellent example of this approach has been the case of lead. The ill effects of lead exposure have been recognized for several hundred years, and while there has been a relentless pursuit of the biochemical lesions and their sites of occurrence, little attention was paid to control of lead in the workplace until the OSHA lead standard was promulgated in 1979. It must be admitted that the pursuit of the molecular level mechanisms of toxicity has driven the recognition that more protective standards are necessary. However, the lag between identification and control, as well as the lag between understanding certain biochemical effects and control, has meant that "prevention" did not occur for thousands of workers or their families. (Do we need to be reminded that even now there are documented cases of children whose blood lead levels are excessive because of contamination by parental clothing?) Embodied in the Act is the notion that objective measures ensuring the control of physical and chemical agents shall be instituted. One set of "objective measures" is clearly spelled out as "Standards" in the Occupational Safety and Health Act. Included are the procedures (Enforcement) for ensuring that those standards are met.

If we accept the notion that there are enormous numbers of workers still at great risk of disease, injury, and death, then it may be worthwhile to analyze the record on standards promulgation for clues regarding the factors that either promote or inhibit the promulgation of standards. This record represents only one aspect of regulation, but it provides insight into understanding what is wrong—or right—with the current approaches.

Examination of the health and safety standards record of the Occupational Safety and Health Administration makes it obvious that the productivity is very



* Reduce or Eliminate Exposure

FIGURE 1. Paradigm for prevention of occupational disease.

low. TABLE 1 provides a list of the health standards since the Act was passed in 1970.

The first and most striking observation regarding the small number of standards is that during the first 10 years of the Act, between 1971 when the Act became effective and January 1981, 14 health standards were issued and 10 of those 14 were in the four years between 1977–81. The last seven years have produced six additional or updated standards. Clearly there is a factor that may be referred to as “political.” This factor is listed in TABLE 2 along with several other factors that are “inhibiting.”

TABLE 3 lists factors influencing the promulgation of standards. These factors are “promoting.” Several of the factors listed in both TABLES 2 and 3 are mirror images. For example, the political factor represents ideological differences such that the leadership will encourage (promote) promulgation of standards or discourage (inhibit) their issuance. Another example is “advocacy,” which can be *pro* or *con* for standards. For example, the well-organized, well-financed resis-

TABLE 1. Health Standards Record of 1971–1987: Occupational Safety and Health Administration

Areas of Regulation	Year of Standard Issue
Asbestos	1972
Carcinogens—14 substances	1974
Vinyl chloride	1974
Coke oven emissions	1976
Diving operations	1977
DBCP (1,2-dibromo-3-chloropropane)	1978
Acrylonitrile	1978
Benzene	1978
Arsenic	1978
Cotton dust	1978
Lead	1978
Carcinogen policy	1980
Access to medical and exposure records	1980
Noise abatement—hearing conservation	1981
Hazard communication	1983
Ethylene oxide	1984
Formaldehyde	1987
Field sanitation	1987
Asbestos	1987
Benzene	1987

TABLE 2. Factors Inhibiting Standard Promulgation

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1. *Political.* There is often a high priority within an administration to deregulate (that is, to not issue standards)
 2. *Lack of urgency.* The media and interest groups are slow to act.
 3. *Advocacy.* Organized, well-financed resistance by the private and industrial sectors (e.g., the Institutes for Chemicals) work against regulation.
 4. *Multisector coverage.* A noise standard, for example, affects chemical industries, the manufacturing sector, wholesale and retail operations, etc., and not just one industrial sector.
 5. *Legal challenges.* Extensive and lengthy court action causes delays.
 6. *Agency characteristics.* Low morale, frustration, and inadequate technical and legal resources within the regulating agency are another factor that impedes regulation.
 7. *Red tape within the government.* Executive orders and OMB control, for example, also work against the promulgation of standards.
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tance of the private industrial sector is an obvious roadblock to an agency's and/or administration's decisions to issue new standards. Conversely, the recent industrial pressure to issue a federal Hazard Communication Standard as a countermeasure to numerous state and local regulations was clearly significant in the Reagan Administration's decision to move forward even though the Office of Management and Budget (OMB) and the Bush Task Force on Regulatory Relief had delayed the standard's release.

Advocacy groups can promote the promulgation of standards through labor unions and public interest groups. There was a long delay in issuing the Cotton Dust Standard, but the legal intervention of several organizations (public interest and labor) was clearly instrumental in the eventual promulgation of the standard. The same scenario has occurred in the cases of field sanitation and exposure to formaldehyde and ethylene oxide.

If many industrial sectors are covered with a single rulemaking, the process becomes so enormous and complicated that the standard may languish (as with the noise standard). However, a very targeted or narrow standard, at least in terms of the number of industrial sectors and number of companies affected, results in a relatively smooth rulemaking (such as that of dibromochloropropane). This issue is particularly pertinent in view of the many recommendations that have been made for a greater number of generic standards.

Especially influential inhibiting factors are governmental red tape and inadequate resources (TABLE 2). The use of governmental red tape to slow the standards process was begun during the Ford administration, when an executive order required an economic impact analysis. The amount of red tape was alleviated

TABLE 3. Factors Promoting Standard Promulgation

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1. *Political.* An administration places a high priority on the issuance of standards.
 2. *Public outcry.* The media, environmental movement, and community groups are alerted to the problem and actively move to solve it.
 3. *Health crises.* Examples include HIV transmission to health care workers or sterility among pesticide (DBCP) workers.
 4. *Narrow sector regulated.* A highly targeted standard covering a few plants in one industrial sector.
 5. *Adequate technical and legal resources.*
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somewhat in the Carter Administration. However, OSHA staff still was required to present to an economic council a defense of the regulatory plan for compliance outlined in various standards. Interference from outside the Environmental Protection Agency escalated in the Reagan era by virtue of a new rule that required the Agency to defend its health conclusions regarding levels of exposure as well as preventive measures and compliance procedures to the superagency, the Office of Management and Budget. It is important to note that the OMB controls the Agency's budget and staffing levels so that the positions and edicts of the OMB really are not negotiable. This escalation in demands has been very successful in inhibiting both the number of standards and their content. An excellent example of this was the failure of OSHA to issue a short-term exposure limit (STEL) for ethylene oxide until a lawsuit was filed. As was mentioned before, the OMB inhibitors were overcome by a well-organized, influential, outside interest group, the industrial sector, when it urged the release of the Hazard Communication Standard (Labeling). Passage at state and local levels of numerous labeling standards made it in the best economic interest of industry to urge promulgation of the Hazard Communication Standard. Depending on the circumstances, a well-organized interest group can exert an almost irresistible pressure. A threat of a picket at the U.S. Department of Labor in 1975 by a union undoubtedly resulted in the formation of the Standards Advisory Committee for Coke Oven Emissions and the eventual standard.

The legal processes involved with promulgation can be prolonged so extensively that standard issuance is delayed for months or years. On the other hand, even when there are numerous "inhibitors," a court decision to require the Agency to issue a standard will eventually produce the standard, as was notably the case with cotton dust, field sanitation, and ethylene oxide.

In my mind there is another very persuasive promoting factor listed in TABLE 3—health crises. Such crises often bring outrage from the citizens, and various organized groups can be an enormous stimulus for passage of a specific standard, notably with asbestos and DBCP. The fact that the media was heavily involved in reporting episodes involving DBCP and asbestos clearly served as pressure to regulate. The nature of the illness can also impart a sense of urgency to the Agency, as is the case with irreversible diseases (such as cancer or neurological disease) or an outcome such as reduced reproductive potential (as caused by DBCP). The counterpoint or "inhibitor" here is not the lack of health crises or problems, but rather the failure to talk and read about the episodes. Lack of recognition by the public that there are still tragedies comparable to those associated with kepone and DBCP is due to the federal agencies' policies of "no comment" on such incidents, cutbacks in recordkeeping, and probably general apathy among the media regarding such episodes.

A willingness on the part of NIOSH and OSHA to report publicly such events, along with a concerned Congress, leads to demands for action. The data in the paper by Landrigan's group are significant because they indicate that during the last few years, when there was little media focus on occurrences of occupational disease, a false sense of security developed.

A task force supported by public and/or private institutions could develop data on five or six states so that more accurate projections can be made. The recommendations of the NAS report entitled *Counting Injuries and Illness in the Workplace* (1987) must be acted upon.

A series of strategies for change must occur. Consultation is alive and well, but the funding for it has not kept up with inflation. One can argue, however, that

employers, almost 20 years after the Act was passed, should begin to pay for this service.

Criminal sanctions must be explored as a means of dealing with the most flagrant criminal acts in the workplace. This enforcement tactic is one that many public health professionals avoid. Yet the public demands strong criminal sanctions in death and injury cases resulting from drunk drivers, so how can one argue against such sanctions in the case of *People vs. Steven O'Neil, Film Recovery Systems, Inc.*?^a While the courts and Congress settle the issue of preemption, OSHA can provide the technical assistance to local law enforcement agencies. Los Angeles County has a team to deal with such possible criminal violations—why shouldn't other big cities have the same?

Medical removal protection, as a critical aspect of the lead standard rules, has been credited with reducing exposures at a more rapid pace than skeptics considered possible. What other standards can be leveraged by this mechanism?

Alternative technologies must be considered as a means of eliminating hazards. NIOSH in concert with other federal agencies, academia, and industry could provide the leadership for such a new initiative. Substitutions for sand, certain solvents, and certain dyestuffs and intermediates could be addressed and recommendations made immediately. In 1912, a tax on matches made with white phosphorus forced an extremely hazardous operation to cease. Can this generation not be as creative? The free marketplace needs a nudge!

A series of recommendations from the labor movement have urged mechanisms to relieve the acute shortage of compliance officers. Consideration of an arrangement for on-site inspectors and local deputies must be made.

If you subscribe to the notion that something is wrong with workplace regulation, then what is it?—a lack of will and resolve at the highest political levels, money, American industry, leadership in the public health service and OSHA? We have heard, and will hear at this workshop, of state and local achievements that are dependent upon the isolated efforts of a few individuals, but these efforts need to be translated nationwide if we are to prevent disease in the next generation. This can best be done by federal leadership to bring the most innovative preventive measures from individual states to the whole country.

There are gaping holes in the standards list. A survey of bridge painting operations will provide the data that acute lead poisonings still occur all over this country, but we need not wait for the results to begin to issue a lead standard for the construction industry. Generic standards may be the most difficult to promulgate, but they provide an important approach. The first generic standards actually promulgated by OSHA were the Access to Medical and Exposure Records and the Carcinogen Policy Standards in 1980. Training, medical surveillance, solvents, and pesticides (manufacture), for example, all are possible areas for generic standards that cover larger groups of workers.

New source performance standards have long been a strategy at the EPA. What about a requirement for improved noise abatement and reduced solvent exposure releases in all new industrial facilities?

Recent revelations regarding working conditions in the meatpacking industry have caused many of us to recall Upton Sinclair's *The Jungle*, written in 1906, and we see that in this industry workers are still using 19th-century techniques in the "high tech" America of 1988. Recent comments from the industry indicate that

^a Nos. 84C5064 and 83C11091 (Circuit Court, Cook County, Illinois, June 14, 1985).

competition is so great and profit margins so narrow that it is impossible to slow down the line and alleviate the ergonomic problems. It is ludicrous that a society so advanced in space and military technology cannot muster a collaborative industrial, federal, and academic effort to solve an antiquated assembly-line problem that is maiming hundreds of workers. I call such impotence a lack of leadership, a lack of vision, and a fundamental disregard for the workers.