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OCCUPATIONAL SAFETY AND HEALTH IN THE MARITIME INDUSTRY

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Preface

On December 29, 1970, the Occupational Safety and Health Act (OSHA) was enacted with the stated purpose "to assure so far as possible every man and woman in the Nation safe and healthful working conditions and to preserve our human resources..." The passage of the Act can definitely be considered a victory for the labor movement. However, the subsequent problems of administration and enforcement have shown that passage of legislation does not necessarily assure adequate implementation.

This report is a compilation of recent information which illustrates the ineffectiveness of OSHA in protecting workers in the maritime industry. It contains a chronology of events summarizing Federal involvement in administering the Act as related to maritime workers. In the conclusion, alternative approaches are suggested, which may be utilized by union representatives in response to inadequate monitoring and enforcement.

In 1971, the AFL-CIO Executive Council issued a statement which is more than applicable to workers in the maritime industry. The Council recognized that "organized labor must... shoulder much of the responsibility for realizing the full potential of this Act. Our efforts must include the plant, the state legislatures, the Congress and the Executive departments responsible for its conduct..."

Recently, the U.S. Senate Labor Subcommittee in conjunction with the General Accounting Office, released a series of 17 issue papers intended to point out the areas in which OSHA has been least effective. One of these papers is entitled Safety and Health Program in the Maritime

Industry. That paper is contained in the appendix of this report and was used as a resource in developing the chronology as well as identifying problem areas in the maritime industry.

The purpose of this report is to present factual information to those individuals who have the responsibility of promoting adequate and effective health and safety standards for their membership. It is obvious that maritime workers and their representatives will have to organize at the local and international level in order to achieve the necessary changes. The Labor Occupational Health Project hopes that this report will be of some assistance in this effort.

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Introduction

Prior to 1970, LSB Safety Inspectors were on the waterfront daily. They identified health and safety violations, notified the employer, and were persistent in their follow-up to correction. This daily inspection was highly successful. Employers had to respond -- conditions began to get better -- accidents were reduced. The daily hard-hitting inspections brought about a more acceptable work environment for the employee. Then along came the Occupational Safety and Health Act of 1970. Public Law 91-596 was designed to protect the American workers. A dramatic story unfolded in the maritime industry as a result of Public Law 91-596. Maritime workers will long remember the negative results of a law passed to help them.

Bob Fowler
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JURISDICTION - PROCEDURES - AUTHORITY

Summary of Events

Before OSHA ..... Labor Standards Bureau Health and Safety inspectors were on the waterfront almost daily, making inspections, consulting with employers, resolving complaints, conducting training sessions and participating in safety meetings.

They had no direct authority to assess penalties for violations of their standards.

After OSHA ..... All LSB health and safety standards were adopted by OSHA.

April, 1971 ..... OSHA field offices were instructed to follow inspection and enforcement procedures established under the Longshoremen's Act.

May, 1972 ..... OSHA Official revealed problems among maritime inspectors:

1. Confusion due to lack of specific policy and guidelines for the maritime inspectors.
2. Low morale among the maritime inspectors due to lack of guidance.
3. Maritime health and safety program deteriorated after OSHA assumed responsibility for administration.

4. No official Maritime office in Washington D.C. existed for assisting field inspectors.

December, 1972 .... Assistant Secretary of Labor established a 7-man task force to study Maritime problems as they relate to policy and procedures of OSHA.

February, 1973 .... Task force reported to Assistant Secretary of Labor:

1. Present Maritime program is unworkable under OSHA dictates.
2. No existing policy in the OSHA compliance for the Maritime industry.
3. No indication of Voluntary Compliance and no procedures to establish voluntary compliance.
4. Accident rates are excessively high.
5. Inspectors unable to write citations in good conscience.

Task Force recommendations:

1. Adjust inspections to equal those of other industries.
2. Announce to the Maritime industry and the OSHA personnel what changes are being made and why.
3. Instruct Maritime inspectors to call the conditions as they see them.

March, 1973 ..... OSHA Training Institute developed 1-week course for Maritime inspectors.

The National Fire Protection Association was contracted to develop a 24-hour training course for Maritime

employees to be completed in 1976.

Westinghouse Electric Corporation contracted to develop 30-hour training course for employers and employees.

October, 1973 ..... OSHA issued a program directive for the Maritime industry, outlining policy and procedure for enforcement in longshoring, but failing to define for Maritime activities other than longshoring.

July, 1974 ..... OSHA listed health hazards found in the Maritime industry and covered by existing OSHA standards. States are prohibited from enforcing health and safety standards with respect to employment covered by the Longshormen's and Harbor Worker's Compensation Act.

OSHA estimated that about 50% of the employees in the Maritime industry were covered by the Longshoremen's Act.

Of the approved State Plans, 12 provided for total Maritime coverage and 13 provided for exclusion of all or part of such employment.

OSHA stated that they have no jurisdiction over the owners of foreign vessels in an American port.

CHRONOLOGY OF ACCIDENT AND INJURY STATISTICS

1960 - 1970 ..... LSB reports showed injury frequency rates in longshoring decreased each year with a 50% reduction for the 10 year period. LSB continued reporting

through 1971.

1971 - 1974 .....OSHA did not continue the LSB reporting system beyond 1971.

April, 1973 ..... OSHA reported an increase in injury rate for the year 1971 of approximately 18%.

March, 1974 ..... The Department of Labor's Bureau of Labor Statistics informed OSHA that no system existed to report accident frequency statistics for the "Maritime industry" as a seperate entity.

July, 1974 ..... OSHA official stated that new accident reporting procedures will closely parallell those of LSB.

HEALTH AND SAFETY INSPECTIONS - OSHA vs LSB

Fiscal year 1972 .. OSHA inspected 67% fewer ships being loaded than did LSB during fiscal 1970.

OSHA inspected 85% fewer ships being constructed, repaired, serviced, or disassembled than did LSB in fiscal 1970.

OSHA had 20% fewer inspectors in 1972 than LSB had in 1970.

1972 - 1973 ..... From July, 1972 to February, 1973, OSHA made 4,488 Maritime inspections. This is approximately 60% fewer than LSB was making in 1970.

1973 - 1974 .....From July, 1973 to February, 1974, OSHA made 3,717 inspections representaing an approximate reduction of 20% from the previous 6 months, and approximately 70% fewer than LSB normal.

February, 1974 .. OSHA officials stated there would be further reductions in Maritime inspections during 1974 due to the new program directive calling for uniformity of Maritime industry inspection procedures with those of other industries.

MARITIME INDUSTRY STUDY

June, 1974 ..... OSHA awards contract to Cooper, and Company of Connecticut to evaluate OSHA's success in reducing longshoring injuries and to recommend improvements for recordkeeping, training, standards and enforcement program.

July, 1975 .....Study from Cooper and Co. is due.

DISCUSSION

Conclusions

This report indicates that the employees of the maritime industry are suffering the effects of a deteriorating governmental administered health and safety program. Under the auspices of LSB, the industry recorded a 50% total reduction in accidents over a 10 year period. During their first year under OSHA, accidents rose approximately 20% and then the reporting system was abandoned. Inspections dropped from 21,723 under LSB in 1970, to 7,150 under OSHA in 1972. Further reductions in inspections were announced by OSHA in 1974.

While accident rates are rising in the maritime industry under OSHA, inspections are being reduced. Confusion still exists as to the States' jurisdiction and authority.

The maritime industry health and safety program has been subjected to a change involving a complete reversal of responsibility on the part of the employer.

Under the LSB program, the employer relied heavily on the LSB inspector to uncover violations of the health and safety standards. Under the OSHA program, the employer is now being charged with the responsibility of monitoring the workplace and "voluntarily complying" with the OSHA standards. This puts the OSHA inspector in a totally different position than the LSB inspector. The OSHA inspector is monitoring the effectiveness of the employer. After reviewing the facts, it becomes easy to understand the employers' dilemma in adjusting from what once was primarily a consulting service to what now exists as a monitoring and enforcement agency.

Unfortunately, the transition is still not complete even though some four years have passed since OSHA assumed rssponsibility of the maritime industry program. It appears that the maritime program will not be fully developed until at least 1977.

There is one provision in the OSHA law that couls possibly speed up the transition. Public Law 91-596 Section 8(c)(1)[1] allows the Secretary of Labor to prescribe by regulation as necessary "...provisions requiring employers to conduct periodic inspections." This has not been done in the maritime industry, even though it could very well provide the necessary catalyst to restore the industry's health and safety program. Further, such action by the Secretary of Labor would make the transition implementation somewhat easier on the officials of OSHA.

The Secretary of Labor is not likely to utilize his authority to require periodic inspections by the employer as this would be a precedent-setting move.

The Health and Safety officials of the International Unions representing members employed in the maritime industry could request that such action be taken. Requests could be in the form of a resolution, a letter of inquiry, or merely a suggested approach to consider for a more expedient transition.

The problem of health and safety standard enforcement on foreign vessels might be handled through a series of labor-management meetings with the foreign carriers aimed at establishing "letters of agreement" on occupational health and safety.

There may also be some value in requesting, from the appropriate Federal regulatory agency, that foreign carriers be required to meet the OSHA standards.

1- See appendix for reprint of Section 8(c)(1)

They are "in fact" creating a workplace in the U.S. and should not be regarded any differently than factories in the U.S. owned and operated by foreign industrialists.

The unions can obtain health hazard information by requesting a "Health Hazard Evaluation" from the National Institute of Occupational Safety and Health (NIOSH). (See NIOSH Appendix for explanation). A study of this type will help the union health and safety representative decide on the union priorities and strategy.

Considering the rising frequency rates in the already hazardous maritime industry, coupled with the present untangling of four years of confusion under OSHA, the health and safety of the maritime employees looks somewhat gloomy. Hopefully, this report will help the employees of the industry understand the root of the problem and guide them towards alternative actions they can take to assure themselves that all provisions of the OSH Act are being utilized and enforced.

APPENDICES

SAFETY AND HEALTH PROGRAM IN THE MARITIME INDUSTRY

Before the Occupational Safety and Health Act of 1970, the Department of Labor's Bureau of Labor Standards (LSB) administered a safety and health program in the maritime industry under the Longshoremen's and Harbor Workers' Compensation Act.[1]

Under the Longshoremen's Act, LSB did not have direct authority to assess penalties for violations of its standards, but could bring action in court if employers willfully violated or refused to comply with standards or willfully hindered LSB from carrying out its responsibilities. LSB inspectors were on the waterfront almost daily, making inspections, consulting with employers, resolving complaints, conducting training sessions, and holding or participating in safety meetings. LSB rarely sought legal action.

After the 1970 act, the Secretary transferred LSB's responsibilities to OSHA. Pursuant to section 4 of the 1970 act which became effective in April, 1971, OSHA adopted the safety and health standards that had been promulgated by LSB under the Longshoremen's Act.

In April, 1971, OSHA headquarters sent a memorandum instructing OSHA field offices to continue, until further instructions were issued, inspection and enforcement actions in the maritime industry according to procedures established under the Longshoremen's Act.

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[1]Employees covered by this act include longshoremen, who load and unload ships, as well as employees who repair, service, construct or disassemble ships.

In a May, 1972 memorandum to the director of OSHA's compliance and standards office, an OSHA headquarters official discussed some of the impacts of OSHA's policy in the maritime industry. He stated in the memorandum that he had discussed the subject with OSHA inspectors attending a training course and that:

> "***There is a wide range of interpretation of the maritime policy throughout the country. Some of this is a result of our decentralization but most of it is because of a lack of specific policy and guidelines for the maritime***(inspector).
>
> "***The maritime program overall has deteriorated rapidly in the past year as compared to what it was before OSHA.
>
> * * * * *
>
> "Morale is low in some of the *** (maritime inspectors); they feel they have been left behind or neglected and made to fend for themselves. ***
>
> "***They all expressed distress in that they know there is no specific maritime office in Washington that they or their Area Directors can contact for overall guidance and assistance when needed."

In December, 1972, the Assistant Secretary for Occupational Safety and Health established a task force to make a study and submit recommendations on how OSHA should realign its policies and procedures for dealing with the maritime industry. The 7-man task force included one official each from four OSHA regional offices, two OSHA headquarters' officials, and a representative of the Department of Labor's Office of the Solicitor.

In its report dated February 2, 1973, the task force advised the Assistant Secretary:

"It is a known fact that the present maritime program, which in effect is a continuation of the old maritime program is both unworkable from *** (OSHA's) point of view***and unworkable for the maritime industry if in fact it were administered as OSHA dictates.

"To this date there has been no strict policy or section in the Compliance Manual pertaining to the maritime industry. Consequently, even though the OSH Act was passed on December 29, 1970, we have had a continuation of inspections, promotional, consultative, (sic) that were established under LSB where in fact OSHA policy dictates that we perform quite differently. ***The following are *** problems that have been created:

"1. We are providing a safety service which should rightfully be in the hands of management ***. This is accomplished by numerous visits to vessels on all coasts on a daily basis. Management in many cases relies upon our visits to point out poor safety conditions and practices. Management *** should be performing this for themselves (voluntary compliance). It is well noted also that approximately 76% of the ships inspected throughout the country are in compliance and citations are at a minimum in direct reversal to our findings in other industries. Are we performing under OSHA when we don't call it as we see it and bringing it to the attention of top management through citations and penalties ***?

"2. The maritime industry at present is over-exposed to our type of inspection. If in fact, we did as the Act dictates, because of our numerous inspections, every stevedore company in the country could in all probability be *** (cited for willful violations) within a 30-day period.***

"3. Due to the present policy (numerous inspections) the Compliance Officer cannot be expected to exercise the authority vested in him. He is quite human and knows that all companies in the maritime industry would be wilful (sic) violators within a matter of weeks just by his presence alone. This is undoubtedly the reason for a 76% compliance factor nationally for stevedoring and a 26% compliance factor for all other industries nationally and yet the frequency rates of accidents in the maritime industry remains excessively high.

"4. We must not continue treating this industry different than the rest of American industry. We are going to be criticized by this industry itself if we continue." (Underscoring supplied.)

The task force report suggested several steps for carrying out the proposal to treat the maritime industry as any other industry to accomplish OSHA's goal of stimulating companies to

voluntarily comply with safety standards and provide safe workplaces for employees. These included (1) adjusting the frequency of inspections in accordance with OSHA's established system for other industries, (2) announcing to the maritime industry and to OSHA personnel, with full explanations, what is to be done and that the frequency of OSHA's presence in the maritime industry would depend upon the level of voluntary compliance as evidenced by complaints to OSHA, and (3) insisting that OSHA inspectors call conditions as they see them to stimulate voluntary compliance by the industry.

Realizing the special problems encountered by maritime compliance officers, OSHA has instituted specialized training in maritime inspection. The OSHA Training Institute in Chicago has a separate one week course dealing with such areas as longshoring, shipyard operations, hazard recognition, contaminants, gear certification, containers, and electrical machinery.

In most major port areas such as Boston, New York, Philadelphia, and Baltimore, OSHA has inspectors who are assigned exclusively to maritime. In areas where the maritime workload is relatively small, OSHA inspectors are generalists, in that they perform inspections in maritime, construction and other industries.

OSHA has also initiated training for employers and employees in maritime industry. The National Fire Protection Association has been awarded a contract to develop a 24-hour course for training of employees in the ship-repairing, ship-building, and shipbreaking industries. The course is scheduled to be developed by February 27, 1976, and will deal with

prevention of accidents involving flammable liquids, oxygen, and carbon dioxide in shipyards.

Another course will be developed by Westinghouse Electric Corporation by December 24, 1975, to develop training materials in the health and safety area for employers and employees in longshoring. Westinghouse is expected to produce a 30-hour course in longshoring safety, 10 job safety and health analyses to be used for employee training purposes, and 7 operation safety and health analyses to be used by both employers and employees.

In October 1973, OSHA issued a new program directive, the stated purposes of which were to (1) set forth the OSHA policy and procedures for enforcement in longshoring and (2) establish the overall compliance policy for maritime industry in general. The directive provides that:

> --Enforcement in the longshoring activities of the maritime industry will be programmed the same way as in any other industry.
>
> --All standards applicable to longshoring shall be enforced. All violations of standards shall be cited and appropriate penalties proposed. All instances of repeated and willful violations shall be cited as such.

Except for the general purpose statement, the October, 1973 directive did not mention OSHA's policy and procedures for maritime activities other than longshoring.

In July, 1974, OSHA officials provided the following list of health hazards which are found in maritime activities. They stated that all such hazards are covered by existing OSHA standards.

Health hazards in longshoring

1. Carbon monoxide
2. Noise
3. Chemical burns and irritations
4. Toxic cargo (pesticides, radioactive cargo, and fumigants)
5. Hydrogen sulfide in fishing boats
6. Heat stress in hot climates
7. Toxic and irritating dusts (castor bean pomace, cement dust, grain dust, and others)
8. Coast Guard list of hazardous materials
9. Skin hazards
10. Oxygen depletion in holds and other areas
11. Poor ventilation
12. Lack of protective clothing
13. Unsafe drinking water and dirty toilets
14. Welding, chipping and painting
15. Inadequate respirators
16. Inadequate first aid provisions

Health hazards in ship construction, repairing, and disassembling

1. Welding, cutting, and heating (fumes and gases, ozone oxides, and eye burns from flashes)
2. Confined space entry (lack of oxygen, poor ventilation and toxic gases)
3. Dust (sandblasting, paint particles, asbestos)
4. Painting (toxic cleaning solvents, paint solvents, vapors toxic metal in paint, anti-fouling coatings)
5. Radiation (x-ray, laser and isotopes)
6. Heat stress
7. Noise
8. Metal fumes (lead)
9. Poor ventilation
10. Inadequate respirators
11. Unsafe drinking water
12. Inadequate protective clothing
13. Dirty toilet facilities
14. Inadequate first aid provisions

The Acting Solicitor of Labor advised OSHA in a memorandum dated October 18, 1971, that Article 3, section 2 of the Constitution prohibits OSHA from delegating to States the development and enforcement of safety standards with respect to employment covered by the Longshoremen's and Harbor Workers'

Compensation Act.

During an interview in July, 1974, OSHA headquarters officials stated that:

--Precise data was not available on what portion of the Nation's maritime activities involves employment not subject to the Longshoremen's Act, but a rough guess would be about 50 percent.

--States' approved plans include provisions on whether and to what extent the State program will cover maritime employment not subject to the Longshoremen's Act. Of 25 States' plans that had been approved, 12 provide that the State will cover all of such employment[1] and 13 provide that the State program will exclude all or part of such employment.[2]

--There has not yet been enough activities under the State programs for OSHA to evaluate and compare their maritime enforcement activities with OSHA's.

OSHA headquarters officials stated during an interview in July, 1974 that OSHA has no jurisdiction over the owner of a foreign vessel in an American port. They stated that OSHA could not require the owner of a foreign vessel to correct hazards aboard the vessel but could require a stevedore to take such action as blocking off hazards while his crew is working aboard the vessel. They stated also that, if there were hazards such as unsafe equipment aboard the vessel, OSHA would not cite the stevedore unless his employees were observed using the equipment.

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[1]Includes Oregon, California, Minnesota, Maryland, Kentucky, Vermont Illinois, Connecticut, Nevada, Indiana, Wisconsin, and Wyoming.

[2]Includes South Carolina, Utah, Washington, New York, North Carolina New Jersey, Tennessee, Iowa, Alaska, Virgin Islands, Colorado, Michigan, and Hawaii.

OSHA officials said that OSHA's relationship to foreign vessels was the same as the Bureau of Labor Standards' relationship to such vessels under the safety and health program formerly administered by the Bureau under the Longshoremen's and Harbor Workers' Compensation Act.

The following chart shows the result of OSHA's attention to longshoring as a target industry during fiscal year 1974. Data on other maritime industries such as ship repairing, servicing, building, and disassembling were not included because they were not target industries. The figures shown are national figures.

No. of inspections		4,037
Total employees		76,422
No. of inspections in compliance		2,744
No. of instances of violations[1]		9,335
No. of non-serious violations		3,257
No. of serious violations/citations[2]		28
No. of imminent danger violations/citations[2]		0
No. of willful and repeat viol/cit.[2]		72
$proposed penalty for non-serious viol.		66,264
$proposed penalty for serious viol.[3]		31,878
No. of violations with penalties		1,453
No. of violations for specific standards:[4]		
1918.25	Ladders	85
1918.43	Handling beams and covers	73
1918.93	Ventilation and atmospheric conditions	25
1918.33	Deck loads	16
1918.81	Slinging	37
1918.105	Head protection	199

1. No. of instances of violations does not equal no. of violations since one violation may consist of a number of instances.

2. In this category, a citation must be issued for every violation.

3. Includes serious and willful and repeat violations.

4. Most frequent violations.

The preceding chart shows that:

--68% of longshoring employers inspected were found to be in compliance

--97% of the total violations were non-serious

--The average proposed penalty for serious violations (including willful and repeat violations) was $318.78

--1904 violations had no penalties assessed.

In addition, no notices for imminent danger have been issued to employers in the maritime industry. OSHA's Field Operations Manual states that:

> "No Notice of Alleged Imminent Danger, OSHA-8 Form, shall be prepared and no imminent danger proceedings instituted, if voluntary elimination of the danger is immediately accomplished by permanent correction of the condition, or if the employer gives satisfactory assurance that he will not permit employees to work in the area of danger until the danger is permanently eliminated. Otherwise, the CSHO shall post the OSHA-8 Form and recommend court action."

Consequently, OSHA's management information system would not show if any imminent danger situations were identified for which notices of imminent danger were not issued because of voluntary elimination of the danger.

Under provisions of the Longshoremen's Act, LSB compiled statistics from employers on injuries in longshoring and in ship construction, repairing, servicing, and disassembling. LSB's reports on such statistics showed that injury frequency rates in longshoring decreased each year from 1960 through 1970, which was the last full year LSB administered the program. According to the reports, the rate in longshoring decreased by almost 50 percent during that period. The reports showed even larger

decreases in the injury rates in ship construction, repairing, servicing and disassembling.

The data compilation under the Longshoremen's Act was continued through calendar year 1971, during which the transition from LSB to OSHA took place. OSHA did not continue the LSB reporting system beyond that year.

In April 1973, an OSHA study team analyzed the data compiled for calendar year 1971 and prior years--for longshoring only--and observed that:

> --the national accident frequency rate in longshoring increased from 69.1 per million hours worked in 1970 to 71.1 per million hours worked in 1971, and
>
> --almost every geographic area except those on the West Coast had an increase in longshoring accident frequency.

In a March 1974 interview an official in the Department of Labor's Bureau of Labor Statistics (BLS), which gathers and analyzes injury data for OSHA, said that the current data system does not identify or break out frequency data for employment covered by the Longshoremen's Act. He said that the current OSHA data system is based strictly on the new Standard Industrial Classification Code Manual, under which there is not a "maritime industry" as such or activities that could be identified specifically as maritime. He said that, under the new system, classifications such as"marine cargo handling," "ship and boat building," and "ship repairing" include, but are not limited to, employment covered by the Longshoremen's Act.

LSB internal reports showed that during fiscal year 1970--the last full year of LSB operations under the Longshoremen's and Harbor Workers' Compensation Act--LSB inspected 21,723 ships being loaded or unloaded (longshoring operations). These do not include LSB inspections of such other maritime activities as ship construction, repairing, servicing, and disassembling.

Because OSHA's internal reports did not identify the number of ships included in inspections of longshoring activities, they could not be compared with LSB's. After being questioned on how OSHA's level of inspections compared to LSB's, OSHA headquarters officials made a survey by telephone to obtain data that could be used to compare with LSB's. They found that, during fiscal year 1972, OSHA inspected 7,150 ships being loaded or unloaded, or about 67 percent fewer than the 21,723 inspected by LSB in fiscal year 1970.

Also, records at five OSHA area offices showed that, during fiscal year 1972, those offices inspected about 85 percent fewer ships being constructed, repaired, serviced or disassembled than LSB made in fiscal year 1970.

Two factors appeared to have contributed to OSHA's making fewer inspections than LSB. First, LSB had 66 inspectors in 1970. In 1972 OSHA had 52 inspectors assigned to maritime activities. Second, OSHA area office officials pointed out that OSHA inspectors had to spend more time than LSB inspectors on paperwork. Unlike LSB inspectors--who could issue notices of violations at the inspection site and who could not propose penalties--OSHA inspectors were required to take photographs, prepare working papers, and write several reports on each

inspection prior to issuing citations and proposing penalties.

OSHA headquarters officials stated during an interview in February, 1974 that implementation of the October 1973 program directive--which states that enforcement in the longshoring activities of the maritime industry will be programmed the same way as in any other industry--would result in a further decrease in the number of maritime inspections. It appears that this is borne out by the data the Committee staff has, which indicates that OSHA made 4,488 maritime inspections from July, 1972 to February, 1973 and 3,717 from July, 1973 to February 1974.

Because of the basic differences between the LSB and OSHA programs, the sheer number of inspections made under one program compared to the other should not be viewed as an indicator of which program was more effective. Effective use of the stronger, more comprehensive, and more direct enforcement provisions in the 1970 act by OSHA could stimulate voluntary compliance by employers with fewer inspections than were made by LSB.

An official in OSHA's Office of Standards Development stated during an interview on July 10, 1974, that the proposed maritime accident reporting procedures were under discussion with the Department's Office of the Solicitor. He said that it was contemplated that the new procedures will incorporate essentially the same requirements that existed prior to OSHA.

In June, 1974, OSHA awarded a contract to Cooper and Company, Connecticut, to conduct a study to evaluate OSHA's efforts in longshoring. The study is expected to be completed in July, 1975 and should include (1) information on OSHA's success in reducing longshoring injuries, and (2) specific recommendations directed toward potential improvements in OSHA recordkeeping, training, standards and enforcement programs. OSHA personnel will aid the contractor in the determination of effectiveness.

Questions

1. Why did it take OSHA from April, 1971 to October, 1973 to decide that the enforcement policy in longshoring should be the same as in any other industry?

2. Concerning the October, 1973 directive, is it OSHA's intent that the procedures set forth for longshoring are to be applied to other activities in the maritime industry? In view of the fact that the directive did not state directly whether such procedures were also applicable to other maritime activities, does OSHA believe that its intent is sufficiently clear to insure uniform interpretation by field offices?

3. What specific actions has OSHA headquarters taken since October, 1973 to insure that field offices are effectively implementing the requirements that all violations be cited, that appropriate penalties be proposed, and that willful and repeat violations be treated as such? What are the results of your monitoring efforts? How do these results compare with similar data compiled prior to October, 1973?

Safety and Health Program in the Maritime Industry

Additional information in the Subcommittee staff folder on this topic:

1. OSHA computer printout showing the inspection and citation statistics for the maritime industry for fiscal years 1973 and 1974.

2. OSHA computer printout showing the results of OSHA's attention to longshoring as a target industry during fiscal year 1974.

3. Internal OSHA Report on Longshoring Enforcement Activity forwarded to John Stender from Barry White, dated March 6, 1974.

4. Supplementary information on the first meeting of the Standards Advisory Committee on Marine Terminal Facilities.

5. Fact sheets and related papers obtained from the Director of OSHA's Office of Training and Education on (1) OSHA's contract with the National Fire Protection Association and (2)OSHA's contract with the Westinghouse Electric Corporation.

6. Briefing paper provided by an OSHA headquarters official in July 1974 on a contract awarded to Cooper and Company.

7. Catalog of training courses offered by OSHA's Training Institute in Chicago.

(This information can be obtained by writing to:

Senator Harrison Williams
Chairman, Labor Subcommittee
Senate Office Building
Washington, D.C. 20510

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

Subpoena power.

(b) In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of a contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

Recordkeeping.

(c)(1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health, Education, and Welfare, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards.

Work-related deaths, etc.; reports.

(2) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed of the corrective action being taken.

Initiating an Occupational Health Complaint with NIOSH

The work place may contain a multitude of potentially hazardous fumes, vapors, dusts, chemicals, or gases that may seriously affect the health of workers. Since many occupational diseases have a gradual onset which may not be disabling for many years, the relationship between "cause" and "effect" becomes hard to pin down. Union officers must be alert for symptoms of disease, or presence of potentially toxic substances, and move accordingly.

Although the usual and generally quickest way to proceed is to file a complaint with the Federal or State Occupational Safety and Health Administration, there is an alternate procedure which may be appropriate in certain cases. A request for a hazard evaluation can be submitted to the National Institute for Occupational Safety and Health (NIOSH). A description of NIOSH responsibilities and suggestions for when it might be advantageous to use their services is presented below.

Description of NIOSH Procedure

Upon request from an employer or employee representative, NIOSH will initiate the following activities:

1. Check to see if any other State or Federal agency has been or is currently involved with the problem. If so, that agency is contacted and further activities are coordinated.

2. The employer is notified that a NIOSH officer is coming to the workplace for an initial physical inspection. If the action was initiated by an employee, the employee representative is also contacted and a suitable time is arranged. (The employees name will be withheld if requested).

3. The NIOSH officer visits the site. (He has the legal right of entry.) The employee representative has the right to accompany him, unless in the judgment of the officer, it would interfere with the fair and orderly physical inspection. The same applies to the employer.

4. An observational survey of the workplace is conducted with these representatives to elucidate the extent of the problem and to determine the number and type of environmental samples to be collected. Employee interviews are conducted to identify adverse symptomatology experienced by the workers.

5. On the basis of the survey, sampling, analytical, and medical tests are derived and conducted by NIOSH to determine the concentration of substance found and the potentially toxic effects to affected employees.

Results of Study

1. Concentrations of the substances found in the place of employment and the conditions of use are identified and set forth where appropriate.

2. A statement of whether such substances have potentially toxic effects in such concentrations, as well as the basis for such judgments is provided.