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Occupational Health and Safety  
in the Maritime Industry



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OCCUPATIONAL SAFETY AND HEALTH  
IN THE MARITIME INDUSTRY ...

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## Preface

The Occupational Safety and Health Act was enacted on December 29, 1970 to "...assure so far as possible every man and woman in the Nation safe and healthful working conditions..." Although the Act's passage is definitely a victory for the labor movement, subsequent administration and enforcement, especially in the Maritime Industry, reveal major implementation problems. The Occupational Safety and Health Administration has not yet replaced the effectiveness of the Labor Standards Bureau's pre-OSHA Maritime Branch program; maritime safety and health have radically deteriorated since 1971.

The Labor Occupational Health Project hopes this report with its accompanying documents will assist maritime workers and their representatives organize at the local and international levels to achieve necessary health and safety program changes. For, as the AFL-CIO Executive Council stated in 1971:

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...

To this end, this report includes: the discussion, "OSHA's Impact on the Maritime Industry;" a brief chronology, "Maritime Industry Health and Safety, Jurisdiction and Authority;" a Senate Labor Subcommittee - General Accounting Office's issue paper, "Safety and Health Program in the Maritime Industry;" Andrew Schmitz's "Evolution of Safety Law and Regulations, Its Staffing and Deterioration 1927-1975;" Page 10 of the OSH Act, Public Law 91-596; "Initiating an Occupational Health Complaint with NIOSH;" and a NIOSH "Request for Health Hazard Evaluation" form.

## MARITIME INDUSTRY HEALTH AND SAFETY

### Jurisdiction and Authority, A Brief Chronology\*

#### PRE-OSHA

1920-1958: The period prior to passage of Public Law 85-742 is characterized by union struggles to reduce maritime industry injuries through greater government, labor, and industry cooperation. Preceded by Supreme Court work-afloat jurisdiction decisions -- that State Workmen's Compensation Laws were not applicable, that State Industrial Accident Boards did not and could not have jurisdiction, and that the Federal Government could not delegate its authority to the States -- the Longshoremen's and Harbor Workers' Compensation Act (L&HWC) was passed in 1927. L&HWC included no enforcement provisions; its safety measures were promotional and recommendatory only. L&HWC's safety functions were staffed and administered by the Federal Bureau of Employee Compensation, transferred to the Dept. of Labor's Labor Standards Bureau (LSB) in 1950. Safety programs were chiefly statistical; monthly bulletins and articles reported accident causes and recommended safety measures. In 1949 safety-training slide programs on hazards common to particular maritime employments or to particular cargoes appeared first in the San Francisco Bay Area ports, then later in the Northwest and Eastern ports.

At the same time a West Coast safety program was being conducted by the Waterfront Employer's Association (WEA), later the Pacific Maritime Association (PMA), Accident Prevention Bureau. Its 1929 Pacific Coast Marine Safety Code outlined specific safety rules for all employee and employment categories, including working methods and conditions. A 1946 joint International Longshoremen's and Warehousemen's Union - Pacific Maritime Association survey of

\* - taken from the 1974 Senate Report "Safety and Health Program in the Maritime Industry" (attached), Andrew F. Schmitz's "Evolution of Safety Law and Regulations, Its Staffing and Deterioration" (attached).

longshoring hazards resulted in the revised Pacific Coast Marine Safety Document being incorporated into the Union agreement. Because of this the Pacific Coast's maritime safety program prospered while most other maritime safety programs suffered severe setbacks at the end of World War II. (The Army Transportation Corps had provided safety officers and civilian safety staff in most U.S. ports during the war).

The 1950's saw growing Labor dissatisfaction with L&HWC's weak safety (enforcement) program and the \$34/week compensation rate. When 1956 legislation raised the compensation rate to \$54/week, Labor temporarily dropped its safety demands. However, two serious accidents in 1957 with many fatalities re-enforced Labor's pressure for a safety law with teeth. Public Law 85-742, basically an enforcement amendment to L&HWC's safety Section 41, was passed in 1958 after discrimination against foreign shipping was written out (the State Department's objection).

1958-1970:

The Department of Labor's Bureau of Labor Standards (LSB) continued to administer Public Law 85-742. The act's main strengths were its three enforcement provisions: civil and criminal penalties; court injunctions effectively stopping future violations of the same regulations; and Cease and Desist Orders insuring compliance. LSB issued injunctions and civil and criminal penalties alike but the Cease and Desist Orders above all improved employer safety attitudes and compliance. LSB's enforcement effectiveness was also due to Longshore accident frequency rates compiled and published monthly, quarterly, and annually by the Bureau of Labor Statistics.

Public Law 85-742 included recommendatory, promotional, and educational provisions. LSB inspectors were on the waterfront almost daily, making inspections, consulting with employers, resolving complaints, conducting training sessions, or conducting safety meetings with employers and employees. Employers, unions, and union members cooperated in the safety training courses and in other respects. LSB's well-developed training program included:

12-hour safety training courses; safety meetings with labor and management together; slide and movie programs on particular subjects; and cooperative ventures with management to train executives in regulations and teach superintendents and walking bosses about their safety responsibilities.

Under LSB, the Longshore regulations became true industrywide regulations and contributed to voluntary compliance to a great extent. Between 1960 and 1970 Public Law 85-742 reduced injury frequencies by more than 50% for Longshore afloat operations. A well-picked, highly motivated and competent LSB maritime staff certainly contributed to this success.

#### OSHA

1971- present: The 1970 (industrywide) Occupational Safety and Health Act (OSH Act) superseded Public Law 85-742. Its goal of safety in the workplace was to be achieved by stimulating employers' "voluntary" compliance to OSHA safety regulations. Compliance officers (inspectors) would serve only a monitoring function and management would take over the promotional and consultive services previously offered by LSB enforcement inspectors. OSHA's enforcement provisions give the violator the leisure to "voluntarily" remove the hazard without penalty. Civil penalties, criminal penalties (for willful negligence or administrative violations), and court injunctions (in imminent danger situations) are in effect last resorts. OSHA also includes provisions for training programs, commissions to develop standards and toxic exposure criteria, research, and adoption of research findings, etc.

LSB's training programs were abolished and its files destroyed when OSHA took over the Maritime Industry program. OSHA staffing no longer emphasized special competencies such as maritime and the LSB maritime-expert staff carried over to OSHA took on general duties as well. Approximately 15 OSHA compliance officers covering the maritime industry part time replaced the 160 full-time LSB maritime inspectors. During OSHA's first year, Longshoring accident frequency

rates rose more than 20% (OSHA abandoned accident frequency reporting the next year).

April 1971: The Secretary of Labor transferred LSB's responsibilities to OSHA. OSHA field officers were instructed to continue LSB's inspection and enforcement procedures.

October 1971: The Acting Solicitor of Labor advised OSHA that the Constitution (Article 3, Section 2) prohibits OSHA from delegating safety standards development and enforcement to the States for employment covered by L&HWC (amended by Public Law 85-742). Whom the law actually covered was unclear.

May 1972: OSHA headquarters memorandum to OSHA compliance and standards officers revealed problems among OSHA inspectors. The lack of specific Maritime Industry inspection policy and guidelines and administration decentralization had produced confusion and varied Maritime policy interpretations. Except for a remnant LSB staff restricted to gear certification, no specific maritime office in Washington, D.C. existed; inspectors and Area Directors had no one to contact for guidance or assistance. Morale was low. And, the maritime program had radically deteriorated during OSHA's first year.

December 1972: The Assistant Secretary of Labor established a seven-man task force to study OSHA's impact on the maritime industry.

February 1973: The task force reported that:

(1) the present maritime (inspection) program, basically a continuation of the LSB program, was unworkable if administered according to OSHA's dictates; LSB inspection procedures conflict with OSHA's goal for a management-provided "voluntary" compliance safety program.

(2) The OSHA compliance manual lacks a specific maritime industry policy.

(3) Procedures to establish "voluntary" compliance were non-

existent; "voluntary" compliance was also nonexistent.

(4) The maritime industry's high compliance factor (76%) stood out against the national overall for all other industries (26%).

(5) The maritime accident rate was excessively high.

(6) Compliance officers apparently were not writing citations when conditions warranted.

In order to stimulate employers' "voluntary compliance", the task force recommended the maritime industry be treated like other OSHA industries by; reducing inspections in line with other industries; calling conditions as they are and issuing appropriate citations; and determining OSHA inspection frequencies by employers' degree of compliance, from complaints to OSHA.

March 1973: OSHA maritime safety training-program planning began. The OSHA Training Institute developed a one-week maritime inspection course. The National Fire Protection Association contracted to develop a twenty-four hour maritime employee course, targeted for 1976. Westinghouse Electric Corporation contracted to develop a thirty-hour course for both employees and employers, also targeted for 1976.

October 1973: A new OSHA program directive outlined compliance procedures for longshoring, but not for other maritime activities although its stated purpose was to outline general maritime industry procedures as well.

July 1974: OSHA headquarters interview revealed:

(1) About 50% of the nation's maritime activities involved employment not subject to L&HWC, and therefore subject to State jurisdiction. Resulting State programs were inconsistent. Of twenty-five approved State plans, only twelve included all such employments. OSHA officials felt that State-program maritime enforcement activities were still insufficient to evaluate or compare with OSHA's. (Actually no one knows what portion of the maritime industry is still under L&HWC's jurisdiction.)



(2) OSHA had no jurisdiction over safety standards enforcement aboard foreign-owned vessels. OSHA could not require the owner to correct hazards aboard the vessel. However, the Stevedore would not be cited for unsafe equipment if his men were not seen using it.

## OSHA's Impact on the Maritime Industry

The Department of Labor's Bureau of Labor Standards (LSB) specifically administered the Maritime Industry's very effective safety and health program prior to the 1970 Occupational Safety and Health Act (OSH Act). Since then, the Occupational Safety and Health Administration (OSHA) has radically decreased maritime inspections without replacing LSB's administrative success or substituting dependable maritime enforcement or inspection procedures. Longshoring accident frequencies, reduced by 50% during LSB's administration of Public Law 85-742 (1960-1970), rose significantly during OSHA's first year (1971); the accident-frequency reporting procedure was abandoned the next year.

LSB's success was primarily due to its inspection and enforcement procedures and its staff's maritime safety expertise (see attached "Evolution of Safety Law and Regulations"). An employer's chances to escape quick action for a violation were very slim; inspectors were on the docks almost daily, inspecting, consulting with unions and employers, or conducting training sessions. Because LSB inspectors had the authority to recommend immediate court action stopping work, though not to issue citations, employers kept their equipment certified to avoid losing thousands of dollars in lost time and compensation. LSB's strong enforcement provisions -- Cease and Desist Orders in addition to criminal penalties and court injunctions -- effectively improved employers' safety attitudes and future compliance.

OSHA is a policing system stressing employers' "voluntary" compliance and convenience. Its major enforcement provision is fining -- up to \$10,000 for willful interference with OSHA or violation of the OSH Act and up to \$1,000 for serious and other citations. OSHA's only other enforcement provision, injunctions for imminent danger cases, is not actually practicable. OSHA regulation violations have a good chance of remaining undetected: OSHA compliance officers are rarely on the docks due to OSHA's limited staffing and "voluntary" compliance emphasis; and OSHA has not (yet) replaced LSB's effective accident-frequency reporting procedure used to pinpoint problem areas.

By itself, fining is not an adequate enforcement measure for the Maritime Industry. The basis for this exceptionally hazardous industry is quick "turn-around;" each day longshoremen face entirely new working environments and new hazards. Under OSHA, while the employer is given an abatement period to "voluntarily" correct infractions, the fine is suspended and the ship free to leave port. A ship will also invariably have left port during the up-to-six-

month possible time lag between an inspection and the citation's issuance. OSHA's sole provision for keeping Maritime Industry "floating" workplaces stationary, applying for court injunctions for imminent danger situations, has never been **invoked**.

Ships' owners do not usually suffer major economic losses due to violations. There are no costly court-imposed work stoppages. Maritime Industry fines have been incidental, averaging between twenty-eight and forty dollars. The few serious citations issued during OSHA's four years are still in inconclusive litigation because the employers refused to accept the citations. Fines incurred by employers and ships' owners are passed directly to consumers in product prices; OSHA legal and administrative costs are passed to consumer-workers in taxes.

The July 26, 1974 Senate Report (attached) concludes that OSHA's effective use of the stronger, more comprehensive and direct 1970 OSH Act enforcement provisions could stimulate employers' "voluntary" compliance with fewer inspections than LSB made. However, while Maritime Industry inspections were reduced by as much as 85% between 1972 and 1973 and further reduced from 574 in February 1973 to 278 in February 1974, following the Assistant Secretary of Labor's July 1973 task-force recommendation that Maritime Industry inspections be further reduced to comply with other OSHA industries, longshoring accidents rose everywhere except the Pacific Coast.

OSHA could issue maximum fines and imminent danger notices but it would first have to establish specific Maritime Industry "voluntary" compliance guidelines and resolve OSHA compliance officers' apparent reluctance to issue Maritime Industry citations (see Senate report). The OSHA Field Operations Manual inhibits imminent-danger court action, prescribing that no imminent danger notice resulting in court action be issued should the employer: 1) voluntarily correct the danger permanently, or 2) give satisfactory assurance that workers will not work in the dangerous area until the hazard is permanently eliminated. No follow-up procedure is outlined and a ship is free to leave port without first correcting the imminent danger. Section 8 (c) (1) of the OSH Act allows the Secretary of Labor to prescribe by regulation as necessary, "provisions requiring employers to conduct periodic inspections." The Secretary has not yet invoked this provision although proposed regulations were submitted late 1974.

OSHA gives employees no recourse to working in dangerous situations until the employer gets around to "voluntarily" removing the hazard. Employee-initiated work stoppages to avoid using obviously dangerous equipment could be precedent-setting. Such a measure, written into the International Longshoremen's and Warehousemen's Union - Pacific Maritime Association's Pacific Coast Longshore Contract Document, is responsible for the Pacific Coast having fewer maritime accidents than the rest of the country although the Pacific Coast is probably the most dangerous maritime area. Under OSHA, employees can request inspections if they demonstrate particular cause; however, the decision to inspect rests with the Secretary (Section 8 (f) (1) ). The time lag between the employee's request and the inspection (and the citation's issuance and the employer's "voluntary" compliance or appeal) places employees in extended continuous danger without legal alternatives.

To return to a safety and health program comparable to the Labor Standards Bureau's, the IL&WU is suggesting a MARITIME OPERATING DIVISION be established within the Department of Labor to specifically enforce maritime safety regulations and training programs. Such a Division would be consistent with OSHA's stated goals, to:

assure so far as possible every working man and woman in the Nation safe and healthful working conditions and preserve our human resources ... to stimulate employers and employees to institute new and to perfect existing conditions ... by building upon advances already made through employer and employee initiative... by providing an effective enforcement program. (Section 2 (b) (1), (4), and (10))

A precedent for a federal agency with exclusive jurisdiction over an industry already exists. The Federal Aviation Administration (FAA) develops its own regulations, conducts safety inspections, and issues citations. Like the Aviation Industry, the Maritime Industry's nonstationary workplace creates additional, unique hazards and enforcement difficulties.

The MARITIME OPERATING DIVISION could rule decisively on jurisdiction confusions such as who exactly is covered by the 1972 Longshoremen's and Harbor Workers' Compensation Act (1972 L&HWC), important because State plans, which must cover maritime employments not covered by the 1972 L&HWC, usually offer lower benefits than the 1972 L&HWC and are inconsistent. (Only 12 of the 25 State plans approved by 1974 covered all non-L&HWC employments). It could reinstate

effective enforcement and accident/illness-frequency-reporting procedures. It could develop specific maritime safety regulations and stress forced compliance as it existed prior to OSHA. It could require foreign carriers docking in American ports to satisfy American safety and health regulations; neither LSB nor OSHA have had jurisdiction over foreign carriers although the FAA does. It could provide guidelines for enforcing Federal-issued dock regulations; some State programs still regulate Federal-jurisdiction dock areas although States have jurisdiction only over dock areas owned by the State, municipality, or other political entity.

It is now up to Maritime Industry workers and their unions to decide on action. Further maritime inspection reductions to comply with OSHA dictates do not seem a very workable improvement for an already exceptionally hazardous industry, especially while accidents continue to increase. "Voluntary" compliance and OSHA's weak enforcement procedures are undermining maritime employees' health and safety; OSHA's police system is not stimulating preventive measures. There are no concrete assurances that things will improve under the present OSHA structure.

Hopefully this report will help maritime employees and others understand why OSHA is not effective and guide them towards alternatives (such as amending the OSH Act, establishing a separate Maritime Operating Division, or changing OSHA's inspection and enforcement procedures) which could insure emphatic maritime standards enforcement. To aid union health and safety representatives decide on union priorities and strategies, unions can request a "Health Hazard Evaluation" from NIOSH (the National Institute of Occupational Safety and Health).

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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.<sup>1</sup>

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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<sup>1</sup>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<sup>1</sup> and 13 provide that the State program will exclude all or part of such employment.<sup>2</sup>

--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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<sup>1</sup>Includes Oregon, California, Minnesota, Maryland, Kentucky, Vermont, Illinois, Connecticut, Nevada, Indiana, Wisconsin, and Wyoming.

<sup>2</sup>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.

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No. of inspections	4,037
Total employees	76,422
No. of inspections in compliance	2,744
No. of instances of violations <sup>1</sup>	9,335
No. of non-serious violations	3,257
No. of serious violations/citations <sup>2</sup>	28
No. of imminent danger violations/citations <sup>2</sup>	0
No. of willful and repeat viol/cit. <sup>2</sup>	72
\$proposed penalty for non-serious viol.	66,264
\$proposed penalty for serious viol. <sup>3</sup>	31,878
No. of violations with penalties	1,453
No. of violations for specific standards: <sup>4</sup>	
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 Slings	37
1918.105 Head protection	199

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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 long-shoring 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?

Evolution of Safety Law and Regulations, Its Staffing and Deterioration  
1927- 1975

by Andrew F. Schmitz

The evolution of maritime employment's safety and staffing were long in coming and due to labor, industry, and government fighting cooperatively and persistently for improvement -- for enforcement regulations in addition to recommendatory, advisory, educational and training provisions. All of these combined in Public Law 85-742 and the LSB/ Maritime Branch's administration to produce Longshoring's enviable 50% injury reduction record between 1960 and 1970. The 1970 Occupational Safety and Health Act (OSH) extended health and safety jurisdiction to all industries but at the Maritime Industry program's expense.

I believe study will show a continuous, systematic destruction under OSHA of the best industrial safety and health program and staff active between 1960 and 1970 when the Maritime Industry achieved the best safety performance record and improvement in United States industry history. Why OSHA wants to accomplish this is seemingly a mystery. I do not think that Messrs. Williams and Steiger and others voting for the Occupational Safety and Health Act (the OSH Act) had in mind that its implementation would include total destruction of existing successful programs, their knowledgeable staffs, and existing regulations assigned to OSHA as per Section 4 (b) (2) of the OSH Act.

With OSHA's passing, it was thought that OSHA's additional manpower would enhance already existing safety programs-- Federal, State, and Maritime. The OSHA program got under way. New personnel, without maritime technology joined the staff. Maritime concerns became secondary. Maritime personnel were assigned other general industry tasks because of their safety expertise, thinning out the maritime staffing. Then, even the maritime personnel in the field were assigned general industry duties.

So "It Sec Gloria Munda" -- so goes the glory of the world. I don't know the Latin for "So Goes the Glory of Public Law 85-742" and of the knowledgeable maritime staff assisting employers and employees, trade associations, and unions create the enviable 1960-1970 accident reduction record. In the writer's opinion, OSHA must have settled for the poorest advice in at least three concerns:

- 1) designating 'Longshoring' with its enviable and unsurpassed record for reducing injury frequencies an (OSHA) "Target Industry" just because of a high accident

incidence rate (frequency rates naturally differ from industry to industry just as shoe sizes worn by USDL personnel differ from person to person).

- 2) abandoning the successful LSB/ Maritime Branch safety program and destroying nearly all of its format and records and
- 3) thinning out the maritime program's staff by reassignment, with additional resignations and retirements due to employee dissatisfaction.

The author, LSB/ Maritime Branch Regional Safety Director, Pacific Region, in charge of Maritime Safety and Federal, State, and Union Safety Programs in the thirteen western states until his retirement July 1, 1967 and since then an independent Maritime and Industrial Consultant, feels this history may be useful to anyone wishing past maritime safety program abuses corrected, so that (OSHA) can return to the program that proved so successful between 1960 and 1970 and improve it further rather than destroy it by reducing staff and services, and in other ways. Any union or management representative wishing to bring this information to the attention of Messrs. Williams and Steiger and other Congressmen has my permission to use this paper.

Much of what I've written here comes from my memory and recollection of such events during my long association with the Maritime Industry, beginning in 1920; my experience eventually took me into nearly all phases of maritime work including vessels and their crews. Later I specialized in Safety -- Accident Prevention and Injury Avoidance and Personal Injury Claims Settlements.

#### 1927 Longshoremen's and Harbor Workers' Compensation Act (L&HWC):

Government, Labor, and Industry were each initially concerned with the great number of maritime employment injuries. The 1927 Longshoremen's and Harbor Workers' Compensation Act (L&HWC) included safety provisions in Section 41 (now subsection 941-33 USC 901) as well as compensation regulations. It was administered by the United States Employees' Compensation Commission (later the Bureau of Employees' Compensation (1946), transferred in 1950 to the United States Dept. of Labor's Labor Standards Bureau (LSB) which already had some safety staff, 30-hour safety training programs for State Safety Personnel and Industry participants, Union-requested safety courses, and "Special Industry" safety training courses). Prior to the law's passage, the U.S. Supreme Court had held that State Workmen's Compensation Laws were not applicable to such work afloat, that State Industrial Accident Boards were without jurisdiction and could

not take jurisdiction, and that the Federal Government could not delegate such jurisdiction to the States.

Until Public Law 85-742 (passed August 1958), Section 41 of the L&HWC Act remained as it was initially -- promotional and recommendatory, without sanctions of any kind. Its safety program was chiefly statistical with accident causes reported in monthly bulletins and articles recommending certain safety measures. There was also (governmental) participation in Industry Safety Programs and Conferences and there may have been some help rendered due to Union complaints; I'm not completely sure about the latter at that early stage. However, I am certain about it after 1945 when, as LSB/Maritime Branch Regional Safety Director, I personally rendered such services to shipyard workers' Unions in several Pacific Coast ports.

From the L&HWC Act's inception, the Waterfront Employer Association's (WEA) (later the Pacific Maritime Association - (PMA) ) Accident Prevention Bureau conducted a Pacific coastwide safety program with the International Longshoremen's and Harbor Workers' Union's (IL&WU) cooperation. In 1929 a joint Labor-Management committee established the Pacific Coast Marine Safety Code, providing safety rules for all categories of employees and employments including acts, methods, and conditions of work. A joint IL&WU - PMA survey (the Feinsinger Report) in 1946 resulted in the revised Pacific Coast Marine Safety Code being incorporated into the Union contract the next year. At this same time, a slide training presentation of Longshoring hazards was developed and first shown in the San Francisco Bay Area Ports on November 12, 1949. The program eventually took in Northwest, Puget Sound, and the Columbia River Ports, covering especially cargoes such as timber prominent in these ports, and East Coast and Gulf Ports as well. The unposed photos, taken with labor and employer sanction and review, were used in Safety and Training meetings; subject priorities were "The Hatchtender" and "The Winchdriver".

As I recall it, most probably all maritime employments unions under the 1927 L&HWC Act were dissatisfied with Section 41's advisory, recommendatory, and promotional limitations and with the maximum \$35 weekly compensation benefit available to injured workers. This dissatisfaction carried over into the late 1950's. Bills before Congress dealt with both problems -- increasing compensation benefits and improving safety legislation. Also, IL&WU legislative representatives in Sacramento were trying to improve the State Safety Law and its Safety Orders for

Longshoring shoreside work.

Throughout, the U.S. Coast Guard was one of the chief opponents to the legislation, contending that BEC (later LSB/ Maritime Branch) had no jurisdiction over work afloat despite the fact that BEC had administered the L&HWC Act plus its advisory and promotional safety provisions since 1927. The Coast Guard maintained it provided sufficient accident investigation and safety services in all U.S. Ports. As I recall, the U.S. Coast Guard memo spelling out its safety program wasn't much -- less than two full typewritten pages. At any rate, in 1956 some sort of a deal or compromise was made. Employers agreed to raise the \$35 weekly compensation to \$54 and Unions dropped their safety demands. Union representatives soon saw this had been a mistake.

The Federal Government had jurisdiction over Longshoring work afloat but no compulsive safety regulations. States had on-shore Safety Orders but no jurisdiction afloat. "Voluntary" longshoring safety standards were discussed and promoted between 1955 and 1957 in the absence of enforcement legislation. That the ideas gained nationwide attention and nearly all ports submitted Standards applicable to their area through Maritime Trade Associations was, in my opinion, at least a good influence and perhaps resulted in some employers becoming more safety conscious and doing more accident prevention. However, Labor was strongly opposed to "voluntary" regulation; it wanted a safety law with teeth.

Two late-1957 explosions -- the tanker SS Jeanny in Oakland or Alameda and the converted Liberty Ship- dry cargo tanker O'Brien in dry dock for repairs and 90% complete -- with many injuries and fatalities added shipyard worker's Union support to longshore union pressures for a regulatory maritime safety law

Congressional hearings for such a bill were finally held in early 1958. My understanding is that while the bill met opposition from various sources (including the Coast Guard), the PMA did not object to it. The bill passed by a comfortable majority following changes remedying State Department objections to the bill's discrimination against foreign shipping and Coast Guard objections to encroachments on its duties, responsibilities, and regulations. President Eisenhower signed the bill into law August 23, 1958.

Public Law 85-742 -- A Safety Law with Teeth:

The LSB/ Maritime Branch continued to administer Public Law 85-742. Formulation of its regulations was an industrywide effort, involving Labor, all categories of Maritime Employments under the Act, Employers Trade Associations, the Coast Guard, States and their Divisions of Safety, Insurance Carriers, and all interested parties. The first regulations developed were for Longshoring, then Ship Repair; regulations were updated per recommendations from the field and elsewhere. Laying the foundation in this solid way resulted in uniformity in the program and its application nationwide.

This program's policy and purpose were definitely not to amass wealth from penalties assessed and collected, nor to make felons or criminals of employers unfortunately sometimes unintentionally involved in serious violations. At the same time this was not to be overlooked.

The Act provided for criminal penalties and the record shows these were invoked. Speaking only from my own knowledge, I can point to two cases -- explosions in shipyards resulting in fatalities and avoidable had regulations not been violated. In each case, the U.S. District Court found for the U.S. Dept. of Labor and assessed the maximum penalty, \$3000 in one case for violating one regulation and \$6000 in the other for violating two regulations. There were also cases of injunctions to effectively stop violations of the same regulations in the future. And, most effective in my opinion, the Cease and Desist Orders, issued where the pattern showed continuing violations or a poor attitude on the part of the employer for compliance, did improve such employers' attitudes and their future compliance.

So that adequate information would be available monthly, quarterly, and annually to determine accident frequency rates, and annually also for severity rates and fatality numbers, injuries and man-hours were promptly reported. LSB/ Maritime Branch reinstated the BEC regulation, suspended during World War II but not revoked, requiring employers and insurance carriers acting for employers to file 'First Report of Injury' in duplicate, one copy to Washington, D.C. and the other to the Deputy Commissioner of jurisdiction. For serious hospitalizing or fatal injuries, LSB also required immediate oral, telephone, or written notice.



All Regions forwarded the statistical information needed to measure safety performance to Washington, D.C. Headquarters where it was assembled and supplied to the Bureau of Labor Statistics (BLS). BLS released the information, dressing it with the U.S. Bureau of Labor Statistics' authority and prestige, but did not include these statistics in its general reporting process; Longshoring afloat was the only part of the Water Transportation Industry providing such information. (The writer believes that even now there remains the need for BLS to obtain injury statistics from all phases of this industry, as set forth in the Bureau of the Budget's Standard Industrial Classification Manual).

LSB made accident cause studies and recommendations where no regulation existed to cover an unsafe situation. Where Coast Guard regulations were involved, the matter was immediately brought to the local Coast Guard Officer's attention. Where vessels were involved and LSB regulations didn't apply and the Stevedore Contractor was not responsible, letters of recommendation pointing out dangers and requesting correction in the spirit of friendliness and cooperation were forwarded to owners and operators. In the Pacific Coast Region, such owners' cooperation produced desirable results.

The LSB safety program, which had been developing since 1927, expanded considerably under P.L. 85-742. Safety Meetings with Labor and Management, safety courses on particular subjects, and cooperative ventures with management to train Superintendents and Walking Bosses in safety requirements and techniques for which they were responsible were conducted nationwide. In the Pacific Region as elsewhere, Maritime Safety Officers developed course materials and training aids such as explosion chambers in addition to the slides and movies compiled since 1949 for the Longshoring, Shipyard, and Harbor Work subject training sessions. Speaking only of the Pacific Coast, we conducted innumerable 12-hour Safety Training Courses with IL&WU, the Accident Prevention Bureau, PMA, and the State Safety Division's cooperation. The longshoremen contributed the 12 hours of their own time to attend and complete such courses. Such longshoremen numbered I think in excess of 6000 on the Pacific Coast.

Public Law 85-742's success is measured not by the fines or penalties imposed but by Longshoring Afloat Operations' 50% injury and fatality reduction between 1960 and 1970. In contrast, according to BLS 1971 Handbook, All Manufacturing worsened from 7.5 to 15, or doubled its frequency rate. If I recall

correctly from a study I made, about twenty-six of the industries actually worsened by more than 100%. (The writer has tried to obtain statistics for Longshoring after 1970 but no one seems to have them. Then also the writer is aware that since November 1972 Longshoring Ashore also comes within the L&HWC Act's jurisdiction. It would be interesting and certainly desirable to have the statistics brought up to date, although today's formula may be different -- I understand 200 man-hours rather than 1000 man-hours).

#### OSHA - Supercedes L&HWC and 85-742

OSHA expands federal health and safety regulation to all industries. It is basically an enforcement-oriented policing system in spite of OSHA's misinterpretation and misapplication of the term 'compliance' and the misnomer 'compliance officer' for its 'enforcement safety inspectors'. OSHA gets no voluntary compliance with its consultation provisions; it compels such compliance by enforcement (fining).

Collecting money fines is of first importance to OSHA's policing system. Of second importance is forcing employers to spend money on safety purchases and, where such purchases run into large sums, pointing out that the money can be borrowed from the Small Business Administration at lower interest rates. Of course, this situation contributes to higher prices and inflation; the employer must recover the fines, capital expenditures, and interest in the product's price. The employer does not actually pay for his violations; he passes his costs on to the consumer. You and I and all consumers also pay for this enforcement in taxes for salaries, OSHA's overhead, OSHA's Review Commission, as well as the attorneys, legal fees, and expenses where employers take such enforcement compulsion to the Review Commission and the Courts.

I do not believe that the dollars collected in fines, plus the number of safety inspections by enforcement officers prevents accidents and injuries. I do believe that providing a safe working environment, safe machinery and equipment, safe working methods, and safe supervision do prevent accidents and that employee cooperation prevents accidents and injuries. Safe conditions can be attained in various ways, other than literal compliance with a regulation's wording.

Implementation of OSHA's processes and enforcement actions should not make criminals of all or most employers. Criminal penalties ought to be sought and collected only where investigation confirms criminal negligence by the employer or his management and supervisorial representatives.

OSHA's implementation and regulations should not be at the expense of prior program staffing, unless positively shown that the man-hours are better used and the staff is equipped with needed technology to render good or better service in other areas. In my opinion, the Occupational Safety and Health Administration errs seriously by assigning expert Maritime Safety personnel to other-than-Maritime duties and by lessening the Maritime Safety staff when Maritime employments require greater numbers of inspections and expert consultive services. Even in shipyards, about the only time a vessel is stationary for periods equivalent to the construction, buildings, etc. trades is during its construction or its annual overhaul. Otherwise, the basis for the Maritime Industry is "quick turnaround".

In addition, OSHA should not have destroyed mostly all LSB/ Maritime Branch records and training aids. This destruction is perhaps bureaucratic bungling to the greatest extent; LSB/ Maritime Branch's effects could have been placed in the Government's Archives for ten years or so to see if OSHA might find any of it useful in the future.

In my opinion, the Occupational Safety and Health Act, 1970, is a "good law" but needs a bit more improvement. I believe the employer shall provide a safe place of work, safe machinery and equipment, safe supervision, and safe methods. I also believe it is up to the employees to keep a safe workplace safe, to use the safe methods prescribed, and to follow safe supervision.

But, OSHA needs to provide a provision for 'Orders' issued in the same procedure as the Cease and Desist Orders were handled under P.L. 85-742 and other laws within similar systems. Without this, OSHA's promotional, recommendatory, advisory, educational, training and cooperative, and policing approaches to safety are inadequate for the Maritime Industry.

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

## 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.

3. A full report of the study including recommendations for controlling observed hazards, if appropriate, is sent to the employer; representative of the employees; and OSHA (or State).

4. The results must be posted at the site of the hazard for 30 days, or the affected employees must be notified by mail by NIOSH.

#### Limitations of NIOSH

1. NIOSH cannot issue citations or levy fines.

2. A study can be conducted only where there is a problem due to a chemical substance. NIOSH does not deal with physical agents (e.g., noise, guarding, trenches, etc.)

#### When to Request an Evaluation

There are certain situations when it is an advantage to contact NIOSH.

1. If OSHA or State inspections have determined that levels of exposure are below standards but employees are experiencing health problems, NIOSH can recommend changes in present standards. Whereas OSHA must treat exposure to a number of toxic substances as additive, NIOSH is bound by no such restriction.

2. Where the primary evidence of a health problem is the symptomatology of workers, NIOSH can conduct medical exams as well as take samples.

3. Where no standards exist, NIOSH can recommend new standards (currently, all dusts without established TLV's are treated as nuisance dusts).

4. Where management has been responsive to union safety requests, NIOSH surveys offer them a chance to abate a hazardous condition without the threat of immediate penalties. OSHA has been generous in all owing time to abate in such cases before conducting their own inspections.

5. Although this procedure may slow down correction of hazardous conditions in some cases (OSHA cannot cite using NIOSH data) the data accumulated from such a study is valuable evidence against the employer in proving lack of "good faith" and "willful" violations.

#### Information

Bobby F. Craft, Ph.D., Director  
Division of Technical Services  
National Institute for Occupational Safety and Health  
Post Office Building; Room 506  
Cincinnati, Ohio 45202

November 2, 1973

RA

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

REQUEST FOR HEALTH HAZARD EVALUATION

This form is provided to assist in registering a request for a health hazard evaluation with the U.S. Department of Health, Education, and Welfare as provided in Section 20(a)(6) of the Occupational Safety and Health Act of 1970 and 42 CFR Part 85. (See Statement of Authority on Reverse Side).

Name of Establishment Where Alleged Hazard(s) Exist \_\_\_\_\_

Company { Street \_\_\_\_\_ Telephone \_\_\_\_\_  
Address { City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

1. Principal Company Activity \_\_\_\_\_  
(manufacturing, construction, transportation, services, etc.)

2. Specify the particular building or worksite where the alleged hazard is located, including address \_\_\_\_\_

3. Specify the name and phone number of employer's agent(s) in charge. \_\_\_\_\_

4. Describe briefly the hazard(s) which exists by completing the following information:

Identification of Hazard or Toxic Substance(s) \_\_\_\_\_

Trade Name (If Applicable) \_\_\_\_\_ Chemical Name \_\_\_\_\_

Manufacturer \_\_\_\_\_ Does the material have a warning label? \_\_\_\_\_ Yes \_\_\_\_\_ No

If Yes, attach copy of label or a copy of the information contained on the label.

Physical Form: Dust ☐ Gas ☐ Liquid ☐ Mist ☐ Other ☐

Type of Exposure? Breathing ☐ Swallowing ☐ Skin Contact ☐

Number of People Exposed \_\_\_\_\_ Length of Exposure (Hours/Day) \_\_\_\_\_

Occupations of Exposed Employees \_\_\_\_\_

5. Using the space below describe further the nature of the conditions or circumstances which prompted this request and other relevant aspects which you may consider important, such as the nature of the illness or symptoms of exposure, the concern for the potentially toxic effects of a new chemical substance introduced into the workplace, etc.

6. (a) To your knowledge has this hazard been considered previously by any Government agency? \_\_\_\_\_  
(b) If so, give the name and address of each.

\_\_\_\_\_  
\_\_\_\_\_  
(c) and, the approximate date it was so considered. \_\_\_\_\_

7. (a) Is this request, or a request alleging a similar hazard, being filed with any other Government agency? \_\_\_\_\_ (b) If so, give the name and address of each.

\_\_\_\_\_  
\_\_\_\_\_  
The undersigned (check one)

- ☐ Employer  
☐ Authorized Representative of employees\*

i            ii            iii            (circle one)

believes that a substance (or substances) normally found at the following place of employment may have potentially toxic effects in the concentration used or found.

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Typed or Printed Name \_\_\_\_\_ Telephone: Home - \_\_\_\_\_  
Address { Street \_\_\_\_\_ Business - \_\_\_\_\_  
          { City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

\_\_\_\_\_  
If you are a representative of employees, state the name and address of your organization.

\_\_\_\_\_  
Please indicate your desire:

- ☐ I do not want my name revealed to the employer.  
☐ My name may be revealed to the employer.

\_\_\_\_\_  
Authority:

Section 20(a)(6) of the Occupational Safety and Health Act, (29 U. S. C. 669(a)(6) ) provides as follows: The Secretary of Health, Education, and Welfare shall. . .determine following a written request by any employer or authorized representative of employees, specifying with reasonable particularity the grounds on which the request is made, whether any substance normally found in the place of employment has potentially toxic effects in such concentrations as used or found; and shall submit such determination both to employers and affected employees as soon as possible. If the Secretary of Health, Education, and Welfare determines that any substance is potentially toxic at the concentrations in which it is used or found in a place of employment, and such substance is not covered by an occupational safety or health standard promulgated under section 6, the Secretary of Health, Education, and Welfare shall immediately submit such determination to the Secretary of Labor, together with all pertinent criteria.

\_\_\_\_\_  
"Authorized representative of employees" means any person or organization meeting the conditions specified in 42 CFR Part 85.3 (b) (4) (i), (ii) or (iii):

- (i) - that he is an authorized representative of, or an officer of the organization representing, the employees for purposes of collective bargaining; or  
(ii) - that he is an employee of the employer and is authorized by two or more employees employed in the workplace where the substance is normally found, to represent them for purposes of the Act. Each such authorization shall be in writing and included in the request; or  
(iii) - that he is one of three or less employees employed in the workplace where the substance is normally found.

\_\_\_\_\_  
Send the completed form to:

National Institute for Occupational Safety and Health  
Hazard Evaluation Services Branch  
U.S. Department of Health, Education, and Welfare  
Cincinnati, Ohio 45202