

A Short History of Private and Public Activities

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A Short History of Private and Public Activities

Accompanying new methods of factory production in the 18th and 19th centuries were exposures to new working conditions and new hazards. As some associations between hazards and injuries or illnesses were recognized, efforts were made to improve working conditions and to reduce or eliminate job hazards. Some of these

originated in the private sector; others, in the Government. Many of these efforts concerning occupational conditions were intertwined with attempts to improve public health more generally. A number of programs were successful, resulting in improved working conditions, although progress has often been strikingly slow (see, e.g., 218).

VOLUNTARY EFFORTS

The importance of workplace safety was recognized by some large American firms around the turn of the century in the face of a rising number of injuries associated with the installation of new industrial machinery. One positive response was the creation of employer policies and practices directed at reducing the frequency of those injuries (box L). In addition to company-specific efforts, several voluntary organizations have been created to promote occupational health and safety.

National Safety Council

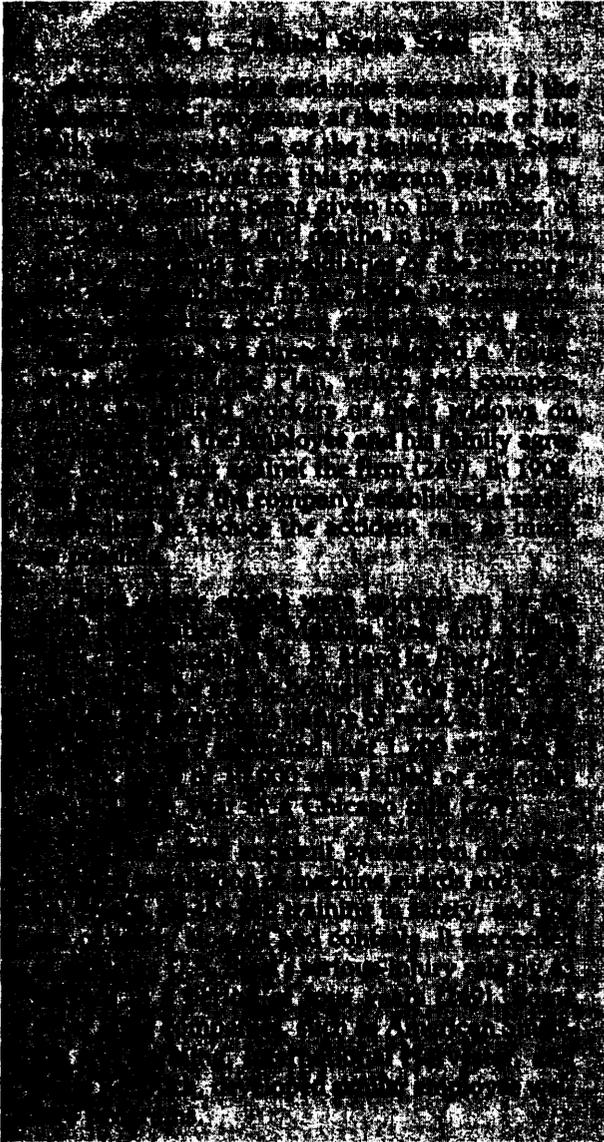
The first national organization devoted entirely to occupational safety, the National Safety Council (NSC), was established in 1912 as a response to the high industrial accident rate. It popularized the "Safety First" slogan that had been used by U.S. Steel. The council was governed by a business-dominated Board of Directors. It sought to achieve industry consensus for its recommendations, and favored nonmandatory standards, training and education, and voluntary safety programs (361) as the best method of improving safety records. The NSC thus epitomizes the voluntary safety movement.

Although the council has now shifted its emphasis to automobile and home accidents, its safety publications (and particularly *Accident Facts* (324)) are well known and widely disseminated.

The council has worked extensively with the Department of Labor to provide safety training courses and materials to industry. Industrial firms that belong to the NSC have been reported to have "injury rates well below those of non-members" (249). The cause-and-effect relationship between low injury rates and membership in the NSC is not clear. It is at least as likely that companies with low rates join the NSC as it is that membership in the NSC results in lower injury rates.

American Occupational Medical Association

Industrial medicine originated in large companies that employed surgeons to treat traumatic injuries. By 1915, enough physicians and surgeons were engaged in industrial health to lead to the organization of the American Association of Industrial Physicians and Surgeons. Seventy-two physicians attended the association's first meeting in 1916. (In 1951, the association's name changed to Industrial Medical Association and later to American Occupational Medical Association.) Also in 1915, the American Medical Association held its first symposium devoted to industrial hygiene and medicine. The American Occupational Medical Association publishes a monthly journal, the *Journal of Occupational Medicine*.



American National Standards Institute

In 1918 a group of large and medium size corporations and trade associations formed the American Engineering Standards Committee to develop uniform standards through consensus. The name of the organization has changed on several occasions and in 1969 has been known as the American National Standards Institute. Although most ANSI standards are directed

at technical specifications for manufacturing, such as having common thread pitches for screws, nuts, and bolts, some of the standards issued by ANSI are directed at improving occupational safety (249).

The membership of ANSI consists of companies (company members) and trade associations, government agencies, and private groups (member bodies). Several unions are also member bodies of the organization. The "consensus" method used by the institute is defined in its constitution as a position "achieved according to the judgment of a duly appointed authority. Consensus implies much more than the concept of a simple majority but not necessarily unanimity."

ANSI standards are developed by standards committees and are reviewed, since 1969, by a Board of Standards Review. The 15-person board has 9 industry members, 2 representatives from the Federal Government, 1 from municipal government, 2 academic representatives, and 1 member from a consumer organization. The board is authorized to decide when a standards committee has reached consensus; this decision includes counting and weighting the votes of the committee's members (249). The votes and weighting factors are not made public, although ANSI does circulate drafts to interested parties for comment throughout the final consensus process. (The ANSI standards concerning occupational health and safety that existed in early 1971 were adopted as regulations by the Occupational Safety and Health Administration (OSHA) using the authority granted in sec. 6(a) of the Occupational Safety and Health Act of 1970. See below and ch. 12.)

American Conference of Governmental Industrial Hygienists

The American Council of Governmental Industrial Hygienists (ACGIH) was founded in 1938 by a group of industrial hygienists from various levels of government. The ACGIH is a professional organization that issues "recommendations" that are developed by a straight membership vote.

By 1968, ACGIH had adopted nearly 400 Threshold Limit Values (TLVs) for hazardous substances. The TLVs are 8-hour time-weighted aver-

age values that are suggested limits for workday exposure; they are “guides for the control of health hazards” and were historically directed to the toxic rather than the carcinogenic, **cytogenic, or mutagenic properties of chemical substances.** In a **special appendix to the 1968 publication,** ACGIH recommended no exposure to a list of carcinogens. ACGIH standards have been adopted by several foreign governments and were incorporated in

1969 by the Bureau of Labor Standards of the U.S. Department of Labor using the authority of the Walsh-Healey Act (described below). Following its establishment in 1971, OSHA adopted the Walsh-Healey standards as its own, resulting in the TLVs published in 1968 by ACGIH becoming occupational health standards for all U.S. industry (249) (see also ch. 12).

GOVERNMENTAL EFFORTS

Workers' Compensation

The first workers' compensation program was established in Germany by Otto von Bismarck in 1884, and other European countries soon adopted their own programs (279). In the United States, the most important early-20th-century activity of State governments concerning occupational health and safety was the creation of workers' compensation programs. A limited program was established for Federal workers in 1908, and a number of States established commissions to study possible programs at about that time. Interest in workers' compensation derived from several sources.

The focus of these efforts was on the perceived deficiencies of the U.S. legal system concerning compensation for industrial injuries. Under Anglo-American common law, individuals can sue others for damages if a wrong has been committed that causes harm. The basic duty of employers was to act with due care for employee safety, as a reasonably prudent person would, and to furnish a sufficient number of safe tools and equipment, as well as a sufficient number of qualified employees to do the work. Employers were responsible for issuing and enforcing rules for workplace safety, rules that with ordinary care would prevent reasonably foreseeable accidents. Finally, there was a duty to warn workers of unusual hazards.

In theory, if the employer failed to live up to this standard of conduct, an injured employee could sue for damages under the common law. This was not always easy, however. The first difficulty was simply proving the employee's case.

Other employees might be crucial witnesses, but in the 19th century, when there were few governmental or union job protections, anyone who testified against an employer would risk being fired. More importantly, the law also established three powerful defenses that employers could use against lawsuits brought by employees. These were:

- negligence of other servants or co-workers,
- knowledgeable assumption of risk by the employee, and
- contributory negligence by the injured worker.

Progressive Era Aims

In the early 1900s a number of Progressive Era humanitarian efforts underlined the plight of the injured worker and paved the way for workers' compensation programs. Crystal Eastman conducted the now-famous “Pittsburgh Survey” of 1907-08. She examined the economic conditions of the families of workers who had been killed or injured. In over half the cases, she found that “the employers assumed absolutely no share of the inevitable income loss.” The costs of work accidents fell “directly, almost wholly, and in likelihood finally, upon the injured workmen and their dependents.” She concluded that a *system* of compensation was necessary to achieve equity, social expediency, and prevention (274).

At about the same time, a State commission in Illinois reported that most court awards for industrial accidents were small, and that the families of the injured were often forced to live on charity. Moreover, for employers who had lia-

bility insurance, only 42 percent of payments went to medical care. The remaining 58 percent went for administration, claims investigation, and legal expenses (100).

Employer Attitudes

The apparently small awards made to most workers was not the only reason for dissatisfaction with legal remedies. Employers, who as a group supported workers' compensation legislation before labor unions did, also found advantages in compensation programs. There is some evidence that just prior to the creation of workers' compensation laws, injured workers, at least in some circumstances, won a substantial portion of lawsuits against their employers (100,130,234, 316).

Moreover, workers' compensation substituted a regular, fixed, and predictable compensation payment for uncertain, potentially ruinous liability judgments (274). Employers also feared that without a workers' compensation system, the courts would start making more awards to injured employees, especially if a worker could show that his/her employer had violated one of the increasing number of State safety regulations (249).

Finally, employers advocated workers' compensation in order to remove one source of hostility from labor-management relations and possibly to prevent more fundamental changes in the worker-employer relationship. They specifically opposed the passage of liability law reforms that would have eliminated the common law defenses of employers. Some large companies had already established company benefit plans that provided payments for work injuries. Smaller manufacturers favored creation of such plans, but lacked the resources to do so privately (667). Larger manufacturers feared that if such plans were not created, legislators might act to change employer and employee rights. In the absence of changes, it was feared that the nascent unions would be given a boost (100,667).

For these reasons, some of the initial advocates of workers' compensation included groups like the National Association of Manufacturers, the Na-

tional Civic Federation, the American Association for Labor Legislation, and a number of the leading industrialists of the day.

Labor Union Reactions

Unions, on the other hand, initially opposed workers' compensation. They generally wanted workers to retain the right to sue employers and advocated abolition of the three common law defenses. They held this position in part because they thought injured workers would receive larger payments under such a plan and because, at the time, they generally mistrusted the government and feared that governmental intervention would weaken unions (667).

Union opposition was also based on their perception that workers' compensation was "palliative and not preventive" (279). The belief that workers' compensation could provide an economic incentive for prevention was, according to MacLaury (279), important in changing labor's position; it "seemed to tip the scales."

Initial Legislation

The very first compensation acts, in Maryland, Montana, and New York, were ruled unconstitutional. The Federal Government enacted a law in 1908, which covered only certain Federal employees. The first State law to become effective and remain so was passed in Wisconsin in 1911. Following this breakthrough and aided by the combined support of reformers, business, and labor, laws were passed rapidly. Four other States passed laws in 1911. By 1925, 24 jurisdictions had enacted compensation, although it wasn't until 1948 that all the States had such laws (249,316,667).

In some cases, workers' compensation was set up to supplement rather than to replace the legal liability system. Lubove states that "[w]here labor had a major voice in shaping compensation legislation, as in Arizona, injured workers were allowed a choice of remedy after injury." It appears that until that choice was removed under business pressure a decade later, most injured workers chose the liability route (274).

Extent of Coverage

The initial laws covered only accidental injuries. Some state legislatures had no intention of compensating occupational diseases and specifically excluded them from coverage. Three reasons for this have been suggested. First, workers' compensation laws were created to supplant common law liability. Under the common law, workers were consistently denied recovery for occupational diseases. Second, it was thought that compensation for disease would be so expensive that it would best be handled under a general health or disability insurance program. For example, it was believed that complete coverage of certain occupational diseases, such as silicosis in foundries, mines, or quarries, would be extremely expensive for the compensation system and those particular industries (261).

It has also been suggested that some of the writers of the early workers' compensation laws used language that would not alarm legislators, but would be flexible enough to allow the courts to extend coverage to occupational disease (46). Massachusetts was the first State to compensate disease when the courts acted in just this way. But by 1928, only 10 States covered diseases. From 1931-39, 14 States added coverage, while 18 States did so in the 1940s. **The 7 remaining States added coverage between 1951 and 1967** (261). (See ch. 15 for a discussion of the current workers' compensation system.)

State Health and Safety Programs

Most early occupational health and safety efforts in the United States occurred at the State level. Occupational safety laws were enacted by various States during the 19th century. As seems to be often the case, there appears to have been a tendency to direct the laws at what were, at the time, new technologies. For instance, in 1852, Massachusetts passed a law regulating steam engines and permitting State inspectors the "power of closure" in situations of grave hazard (249). Twenty-five years later, in 1877, the same State passed the first factory-inspection law that required the installation of certain safety devices (guarding of belts, shafts, and gears), fire exits, and protection on elevators (279).

The early lead of Massachusetts in establishing regulations about workplace safety was followed elsewhere. By 1890, 22 States had passed regulations permitting safety inspectors in mines, and 14 had factory and workshop inspectors. However, these early laws were rarely enforced, partly because inspectors, who were often political appointees, were too untrained to recognize even the most obvious safety hazards.

In the first decades of this century, Alice Hamilton (box M) and other researchers actively pursued the work-relatedness of certain diseases. Their work was important in stimulating the interest of State governments in occupational health. By 1913, programs were organized in Connecticut, New York, and Ohio. The first important occupational disease laws, the "lead laws," were passed in New Jersey, Ohio, and Pennsylvania (373).

Despite the establishment of these State occupational health and safety programs in the early part of this century, these programs were often deficient. A 1964 study reported that, on average, there was only one occupational health staff member for every 108,000 workers, and there were fewer than 1,600 safety inspectors in the various State programs combined (249).

A survey taken in 1968 found that occupational health programs were in place in only 20 States and jurisdictions and that most States had more game wardens than safety inspectors. State occupational safety programs, which were much more highly developed than occupational health programs, covered only the mining portion of the work force in 4 States, and 1 State had no safety legislation at all until 1967. State expenditures on occupational safety ranged from 1 cent per employee in Wyoming to \$2.70 per worker in Oregon. In addition, as late as 1969, only 21 States gave safety inspectors the right to shut down a work area that presented an imminent hazard (249).

Moreover, even in the States with occupational health programs, the powers to develop and enforce occupational health laws and to inspect worksites were often diffused through several agencies. The resulting fragmentation of powers contributed to the difficulties of enforcing State occupational health laws.

Box M. — Alice Hamilton

Alice Hamilton is recognized as one of the founders of occupational health in the United States. She received her medical training at the University of Michigan. Lived in Hull House in Chicago, was greatly influenced by Jane Addams, and later became the first female faculty member at Harvard University Medical School.

In 1910, the Governor of Illinois appointed her to a member of the State Commission on Occupational Diseases. In addition to Hamilton, the commission includes four other physicians, a professor of sociology, an employer, and two members of the State Labor Department. The commission was directed to survey the effects of industrial exposures to lead, arsenic, brass, carbon monoxide, cyanides, and turpentine. It had no legal right to demand entry into a factory and relies on persuasion to accumulate the information it needed to report one year later.

The commission's report was the first systematic study of occupational diseases in the United States. It identified the health hazards of many industrial processes and led to the passage of the first federal occupational health law, the Federal Pure Food and Drug Act of 1906. The report also led to the passage of the Federal Occupational Safety and Health Act of 1910. The report was a landmark in the history of occupational health and safety in the United States. It provided the first systematic study of occupational diseases and led to the passage of the first federal occupational health law, the Federal Pure Food and Drug Act of 1906. The report also led to the passage of the Federal Occupational Safety and Health Act of 1910. The report was a landmark in the history of occupational health and safety in the United States.

A final complication of separate State laws is illustrated by what happened when Pennsylvania banned the use, manufacture, storage, and handling of beta-naphthylamine, a carcinogen. Soon after the ban, another facility in another State began producing the chemical (249). This State-by-State approach was also criticized by business representatives. A keynote speaker at a trade association meeting in Washington in 1973 noted:

When . . . [there is] a proliferation of different state plans and state enforcement . . . American business [has] great difficulty because most . . . companies . . . are multiproduct, multiplant companies. Having to live with . . . 40 or 50 different approaches . . . as distinguished from a single set of rules . . . concerns me greatly (277a).

Thus, by the time Congress considered Federal occupational health and safety legislation in the late 1960s, there was widespread agreement that, as one historian has summarized it, “safety and health laws, historically left to the States, were piecemeal, varied in quality, and often unenforced” (124).

Early Federal Government Programs

As early as 1790, the First Congress appeared to take an interest in the safety of merchant seamen by giving the crew of a ship at sea the right to order the vessel into the nearest port if a majority of the seamen plus the first mate believed it unseaworthy (279). In 1798, the Marine Hospital Service, which evolved into the Public Health Service, was established to provide care to seamen disabled on the job. The Hospital was paid for through the first system of health insurance in this country: a tax of 20 cents annually deducted from all seamen’s wages (249). In the early 19th century, the Marine Hospital’s physicians were primarily concerned with the control of epidemic diseases, such as cholera and yellow fever, which was more in the realm of public health than worker health.

Federal employees benefited from several measures passed in the 1800s: an 1833 law granted compensation to disabled seamen; an 1868 law limited the workday of Federal employees to 8 hours; in 1908 and 1916, workers’ compensation

was enacted for Federal railroad and other employees. Several early attempts (1796, 1852) at Federal intervention in matters of public health (such as enforcement of maritime quarantine and State grants to establish asylums for the insane) were rebuffed by the States, which considered public health their responsibility (249).

Federal Research and Assistance in Occupational Safety and Health

The Public Health Service (PHS) activities were extended to the workplace in 1914 when the Office of Industrial Hygiene and Sanitation was established in the Division of Scientific Research (249). During the next 20 years, the office engaged in research to identify occupational health hazards and their effects. It studied lead poisoning, looked at hazards in brass foundries and in the glass and chemical industries, and made sanitary surveys in war plants during World War I. It also conducted studies about the physiological effects of lighting, high temperature, fatigue, and other environmental conditions in the workplace.

A study in 1924 followed up the deaths of 20 people who had been employed in the painting of radium watch dials. Recommended control measures subsequently ended radium poisoning in the watch industry. Less spectacular, but bearing on the health of many more workers, was the Office of Industrial Hygiene and Sanitation's study of the dusty trades. Begun in 1923, this research showed the extent of health impairment associated with the granite, pottery, cement, cotton textile, and mining industries.

During this same early-20th-century period, the U.S. Bureau of Labor, and its successor, the Department of Labor, also sponsored research on occupational health and safety. Its reports included studies of lead poisoning, phosphorus-caused disease, the dusty trades, and industrial accidents (124). A 1910 report on "phossy jaw," published by the Bureau, was important in revealing the nature of that occupational health problem. In the second decade of this century, the Bureau employed Alice Hamilton to investigate occupational hazards especially in the "dusty trades" and published the results of her studies (279).

The passage of the Social Security Act in 1935 led to an expansion of PHS studies of occupational hazards and to the provision of grants to States for public health work, including industrial hygiene activities. During the 1930s, the Public Health Service studied the health effects of lead in gasoline and of fumes of chromic acid and mercury in the workplace.

A 1937 reorganization of the PHS resulted in the Scientific Research Division being consolidated with the National Institutes of Health (249). The Office of Industrial Hygiene and Sanitation along with the Office of Dermatoses Investigations became the Division of Industrial Hygiene of the National Institutes of Health. Seven years later, because of the marked increase in its work with States, the Division was transferred to the Bureau of State Services.

In World War II, as in World War I, the PHS was concerned with the protection of employee health in government-owned, privately operated munitions plants. A dramatic illustration of the success of these efforts is provided by mortality associated with TNT manufacture in both wars. During 7 months of World War I, 475 workers died and 17,000 were disabled by fumes; in World War II, there were 22 deaths in 35 months. In addition, studies were carried out in aviation medicine and on the health effects of new chemicals and metals, such as vanadium and beryllium, newly introduced into airplane manufacture.

Other reorganizations followed World War II. In 1953, the Federal Security Agency, which had included the Public Health Service, was abolished, and the Department of Health, Education, and Welfare (HEW) was established. The Division of Industrial Hygiene became the Occupational Health Program and remained in the Bureau of State Services until it was designated the Occupational Health Program in the Bureau of Disease Prevention and Control in 1966. Other organizational moves within the Department followed, and it was renamed the Bureau of Occupational Safety and Health (249).

The Occupational Safety and Health Act in 1970 established the National Institute of Occupational Safety and Health (NIOSH), and in 1973

NIOSH was transferred to the Centers for Disease Control of the PHS. During all the bureaucratic reorganizations since it began in the Public Health Service, the occupational health program has produced important studies about occupational health and, more recently, safety.

Federal Legislation and Regulatory Programs

Federal regulatory attention has historically focused on several high-hazard industries, such as mining, longshoring, railroading, and construction. The coal mining industry provides an example of Federal efforts to control occupational hazards in these industries.

Coal Mine Safety Legislation

In the wake of the Monongah, WV, coal mine disaster of 1907 that killed 362 miners and other accidents that caused the loss of many lives, the Bureau of Mines was established in 1910 within the Department of Interior to promote mine safety. Bureau personnel were specifically denied “any right or authority in connection with the inspection or supervision of mines.” Although the powerlessness of Bureau personnel was widely deplored, it was not until 1941 that the Federal Coal Mine Health and Safety Act, which granted inspection authority to the Bureau, was passed. An excerpt from the House of Representatives report accompanying the bill captures the sense of Congress at the time:

Investigation reveals no common standard of safety among the States, no common regulations, and, in addition to this, a lack of uniform enforcement of such [State] regulations as are in effect In order to supplement the work of the State agencies, the bill under consideration extends and enlarges the authority of the Federal Bureau of Mines. It is not regulatory in any sense. It merely authorizes the Bureau, through its representatives, to make inspections of the underground workings and publicize its findings and recommendations. These inspections . . . are to be made in conjunction with the local State agencies so that there is no assumption of the State authority (quoted in 249).

Later laws gradually increased Federal authority over coal mine hazards; in 1966, Bureau in-

spectors were permitted to close certain establishments operated by employers guilty of repeated serious violations.

A disastrous explosion in 1968 killed 78 miners in Farmington, WV. This crystallized public attention on mine safety. Citing the Federal Government’s “fatalistic attitude” and failure . . . “to act vigorously to change [the prevailing bad practices],” the 91st Congress passed the Coal Mine Health and Safety Act of 1969 (the Coal Act) (249).

Despite the increase in authority given to the Federal Government by the 1969 Coal Act, safety and health conditions in the mines continued to be unacceptable to the Congress; in 1973, approximately one of every 1,500 miners, compared with one of every 12,400 workers in general industry, were reported to have been killed. In 1977, Congress passed the Federal Mine Safety and Health Amendments Act, the first Federal law to consolidate jurisdiction over both coal and metal mines and all safety and health matters (except training and research) in one executive department. The Department of Labor was empowered by this Act to inspect mines, and to develop, promulgate, and enforce safety and health standards applicable to mines (249).

Legislation for Other Industries

The New Deal. —Frances Perkins, selected by President Franklin D. Roosevelt in 1933 to be the Secretary of Labor, brought experience in occupational safety and health to that position. In 1934, she created within the Department the Bureau of Labor Standards, the first permanent Federal agency with a mandate to promote safety and health for the entire work force. To a major extent, the Bureau acted by aiding the States in the administration of their workplace health and safety laws and by promoting protective legislation.

Three New Deal-era laws contributed to a growing Federal involvement in occupational safety and health. As noted above, the Social Security Act of 1935 provided for the Public Health Service’s funding of State industrial health programs. In addition, the Fair Labor Standards Act of 1938 (the “minimum wage law”) allowed the Labor Department to bar employment of persons

under 18 in dangerous jobs, while the Walsh-Healey Public Contracts Act of 1936 directed the Department to ensure standards for safe work by Federal Government contractors and to “blacklist” contractors who did not comply with the standards (279). This last act is of particular interest because it created a Federal regulatory role concerning job safety and health and located this function in the Department of Labor.

Walsh-Healey Act.—This legislation covered all employees working for employers who had contracts with the Federal Government that exceeded \$10,000 in total value. The McNamara-O’Hara Act of 1966 and the Construction Safety Act of 1969 extended Federal regulation to service contract employers and Federally funded construction employers, respectively. Employers were required by the terms of their contracts to comply with Walsh-Healey safety and health standards, which were recommended by the Bureau of Labor Standards of the Department of Labor. The Bureau of Labor Standards was also given the authority to inspect workplaces covered by the Walsh-Healey Act and had the power to prohibit employers who violated the act from bidding on Federal contracts for a period of three years.

Federal involvement in setting safety and health standards intensified in the late 1950s. In 1958, an amendment to the Longshoremen’s and Harbor Workers’ Compensation Act extended the Federal role in protecting safety and health in the hazardous maritime trades. The amendment authorized the Labor Department to set standards in those trades and to seek penalties against employers who willfully violated safety and health standards. Compliance with the standards was good after enforcement began in 1960, and accident rates in the maritime trades declined (279).

Acting on its own in December 1960, the Labor Department issued a set of mandatory safety and health standards under the Walsh-Healey Act. However, objections were raised to the rigidity of the rules that the Federal Government required State occupational safety agencies to enforce when they inspected Federal-contract workplaces. The criticisms were heeded by the Department, and hearings about the Federal standards were held in March 1964.

The Federal Bureau of Labor Standards almost never used its inspection and enforcement powers; in 1969, only 5 percent of the 75,000 firms covered by Walsh-Healey were inspected. At the 3,750 worksites inspected by the Bureau in 1969, a total of 33,000 violations of safety regulations were recorded, while only 34 formal complaints were issued. Two companies were blacklisted (prohibited from bidding on Federal contracts) in 1969, and three had been similarly treated in 1968 (361).

The history of events under the Walsh-Healey and other acts exemplifies the sporadic efforts of the Federal Government to control occupational hazards in the years before OSHA. However, a pattern of increasing Federal involvement, such as the progression that occurred in mining, can be seen, particularly in the extra-hazardous trades—maritime, railroading, and construction. In each case, the first laws permitted Federal personnel to inspect specific aspects of hazardous operations, such as man-cages (personnel hoists) in mines, air brakes on trains, and shackles and other rigging components in longshoring. This first stage was gradually followed by Federal assumption of the responsibility for developing or recommending standards, helping employers to comply with them (and only rarely, in cases of grave danger, using the power of closure), and finally enforcing them. In all cases, the creation of Federal agencies with inspection and enforcement authorities required more than a half-century from the time of initial congressional action (249).

The Occupational Safety and Health Act of 1970.—One result of the strong criticisms voiced before and during the 1964 Department of Labor hearings was a decision of the Department to examine its safety and health policy. A study by an independent consultant characterized the Labor Department’s safety laws and programs as fragmented (279). During this period of self-examination, the environmental movement was attracting public and congressional support in its bids for Federal laws to protect human health and the environment from the effects of pollution. The environmental movement spilled over into questions of occupational health because of the attention

paid to chemicals as risks to health and the reasonable extension of “environment” to include the workplace.

The Public Health Service published *Protecting the Health of Eighty Million Americans* (the “Frye Report”) in 1965, which drew attention to threats to health from new technologies. Although it highlighted the evidence that some chemicals were associated with cancer causation, it also emphasized that many “old” occupational health problems had not been remedied. The report suggested an approach to improve occupational health that would require a major new effort from the PHS. The AFL-CIO urged President Lyndon Johnson to respond to the PHS report’s recommendations (279).

With the President expressing interest in occupational safety and health, both the Labor Department and the Department of Health, Education, and Welfare began development of legislation for a Federal program in occupational safety and health. The departments deadlocked on the issue of which one would control the national program in late 1966, and the effort stalled (279).

A dramatic bureaucratic action led the Bureau of the Budget to accept the Department of Labor’s recommendations for legislation rather than those of HEW. In 1967, it was learned that abnormally high numbers of uranium miners were dying of lung cancer. Later that year, the Federal Radiation Council, composed of representatives from a number of Federal agencies, met to consider protective measures for uranium miners. They came to an impasse concerning the standard proposed by the Atomic Energy Commission versus the more stringent standard proposed by the Department of Labor. Unhappy with their indecision, Secretary of Labor Willard Wirtz adopted the proposed Department of Labor standards under the provisions of the Walsh-Healey Act the very next day. This bold move was instrumental, according to MacLaury (279), in the Bureau of the Budget accepting the Department of Labor’s recommendations about legislation.

In January 1968, President Lyndon Johnson called on Congress to pass job safety and health legislation closely modeled on the recommendations of the Department of Labor. The proposal

gave the Secretary of Labor the responsibility of setting and enforcing standards to protect 50 million workers. The bill also had a general duty clause requiring employers to “furnish employment and a place of employment which are safe and healthful.” It gave inspectors legal authority to enter workplaces without management’s permission or prior notice. Violators could be punished with civil or criminal penalties. Interested states could develop their own occupational health and safety programs to replace the Federal one. The Department of HEW would provide the Labor Department with scientific information (279).

Although hearings were held, that bill did not reach the floor of either the House or the Senate. Part of the reason was the opposition of business, particularly the Chamber of Commerce, to bestowing so much power on the Secretary of Labor and to undermining the role of the States in occupational safety and health. Also important were other events of 1968: Riots in the inner cities, protests against the war in Vietnam, and President Johnson’s decision not to run for re-election competed with occupational safety and health for public and congressional attention.

In 1969, Congress passed the Coal Act (see above) and President Richard Nixon introduced a new version of an occupational safety and health law for all U.S. workers. His version skirted the issue of whether the Department of Labor or HEW was to have the lead in the Federal program. The duty of Labor was to inspect workplaces for compliance with standards. The role of HEW was to carry out research. The important function of issuing safety and health standards would be vested in an independent, five-person standards-setting board. The Nixon proposal also stressed the use of existing State government programs and private industry efforts (279).

Objections to the Nixon bill were raised by many Democratic and some Republican congressmen. Their concerns involved the independent standards-setting board, because of the administrative confusion it would cause and its lack of political accountability. Labor unions, in particular, opposed this board, preferring instead that the authority to set standards be given to the Secretary of Labor. In addition, objections were

raised to the bill's enforcement scheme because it would penalize only willful, flagrant violators. Finally, the bill's reliance on industry-written "consensus" standards, exemptions for small employers, and a three-year delay in its effective date were also points of criticism (279).

In response, Democrats in the House and Senate had already introduced their own bills and both the House and Senate committees reported to the floor bills sponsored by Democratic members. In the Senate, Peter Dominick (R-CO) presented a substitute bill that would have established two independent boards—one to issue standards and one to decide enforcement appeals. This was rejected by a two-vote margin. Then Jacob Javits (R-NY) introduced an amendment that gave the Secretary of Labor the authority to set safety and health standards and established a separate commission to oversee Department of Labor enforcement of the standards. This amendment was adopted, although another amendment to restrict the authority of inspectors to close down hazard-

ous operations was narrowly rejected. (In addition, there was some debate on the criteria for standards. This is discussed in ch. 14).

In the House, Congressman Steiger (R-WI) proposed as a substitute an amendment that represented a modification of the original Nixon proposal and this substitute was adopted. The conference committee had to resolve a large number of differences. They used the framework of the more liberal Senate bill. The single most important change from the Senate version was the deletion of a provision that allowed the Secretary of Labor to close down a plant under conditions of "imminent danger." Under the provisions of the bill that emerged from conference, the Secretary is required to obtain a court order before closing a plant that poses an imminent danger. President Nixon, through the Secretary of Labor, let it be known that he approved the bill, and both the House and Senate passed the Occupational Safety and Health Act of 1970 (279).