

## **“Maine Top 200” – OSHA Shifts its Focus From Regulations To Outcomes**

### **An Agency Under Attack Develops a New Strategy**

#### **Background:**

The Occupational Safety and Health Administration was established by the Nixon Administration in 1970. Its mission is to improve health and safety in the American workplace. Although it was run by Republican – appointed administrators during 18 of its first 25 years, it has been bitterly criticized by many Republicans (and by some Democrats as well) for its procedures. Its critics call it arrogant, rigid, more interest in promulgating regulations and issuing citations than in real problem solving, and they cite numerous anecdotes of seemingly absurd OSHA regulations stringently administered by narrow-minded OSHA bureaucrats.

OSHA defenders argue just as strongly that the agency has been a savior for American workers. They refer to studies showing that OSHA is responsible for saving 6,000 lives each year, that its regulations and oversight role have directly led to major decreases in injuries and illnesses on the job.

Whatever one’s views of OSHA, the nation needs a set of standards for workplace health and safety. Without such standards, any company spending money to improve its health and safety is potentially at a competitive disadvantage: it is raising its costs for improvements that may not be felt by customers. What isn’t clear, however, is the best way to achieve health and safety improvements. Eliminate OSHA? Privatize its functions? Cut its funding and reduce its regulations? Maintain its current role and approach? The OSHA office in the State of Maine has come up with a different solution, one that is working well for all parties.

#### **Turning Away From the Old Approach**

In 1992, Maine’s OSHA managers and staff took a hard look at the results they were getting, and they weren’t pleased with what they saw. Over the preceding decade, Maine employers had one of the worst accident rates in the country. In 1990, the state’s illness and injury rate was 63% higher than the rate for the country as a whole. The state was highest (worst) in the country in worker compensation claims per capita, it was the highest in costs per claim, it had one of the worst records for work days lost to injury.

Sources: *Occupational Health and Safety*, 11/94; *Occupational Hazards*, 11/94; Maine Top 200 Experimental Targeting Program Report, 10/14/94; Bill Freeman, OSHA Maine office; *Common Sense Government*, Third Report of the National Performance Review; Washington Post; 7/23/95, “Regulators To Consultants,” in *Government Executive*, 11/95; “The New OSHA,” in *Government Executive*. 5/97, Davis Layne, OSHA regional office.

Further, the staff realized that they weren't getting the results they sought from their inspections of Maine employers. They had done numerous "wall-to-wall" inspections of large companies, writing up hundreds or thousands of citations for health and safety problems and collecting large sums in fines....yet, when their inspectors returned several years later they saw little if any improvement in the workplace.

One of the most worrisome findings was the lack of a correlation between the number of hazards that OSHA inspectors found in the workplace, and reduction in injuries on the job. In other words, OSHA staff were following their regulations and inspections manuals very well, but that still wasn't producing an impact on workplace health and safety. It was a classic case of "the operation was a success, and the patient died." Indeed, the Maine office was the winner of one of OSHA's "gold medals," recognized by the national office for detecting the most safety violations, issuing the most citations, levying the most fines. Yet the state ranked at the bottom in terms of workplace safety and health.

Labor unions complained that the employers were not taking strong corrective action, and employers complained loudly to Congress about the tedious OSHA regs and seemingly absurd OSHA rules that drove them crazy. It was a "lose-lose" situation, and the OSHA leadership in Maine decided it was time to take a different approach.

"We stepped back to look at the results of our work, and we realized we weren't getting the outcomes we wanted," recalled OSHA's area director in Maine, Bill Freeman. "We were finding literally thousands of individual workplace hazards in our major inspections, and then we'd come back eight years later and find no change in overall safety and health conditions. Focusing on our regulations, on the individual hazards we detected, wasn't helping us achieve the mission. We needed to come up with a systematic approach to the problem, and to do that required involvement of the employees on the worksites."

Freeman noted other factors that contributed to OSHA's problems:

- a fragmented organizational structure that separated the health from the safety inspectors.
- separate inspections by the office's health and safety inspectors of the same employers; the two inspection units weren't coordinating and communicating the results of their inspections because they saw themselves in competition with each other.
- a staff focus on producing outputs (number of inspections, of citations issued, of fines levied, etc.), because that's how they were measured.
- a reward system that forced OSHA compliance officers to find and cite as many hazards as possible; they had no discretion to issue warnings, and if they found no violations during an inspection, the assumption was that they weren't looking hard enough.

- employers who didn't understand OSHA's detailed regulations, resented OSHA's presence and saw the relationship as necessarily combative.
- a traditional inspection approach that was very time consuming. A "wall-to-wall" inspection of a large employer would involve 6-9 inspectors, working full time for three months or more on site, then working an additional three months in the office preparing the report. The reports frequently led to litigation, which could occupy inspectors for another 6-24 months.

### **Moving to A Different Approach: "Maine Top 200"**

In response to the discouraging results of its self examination, the OSHA office began a program called Maine Top 200, a new approach to improving workplace health and safety. Early in 1993 the office identified the 200 Maine employers with the highest number of serious workplace injuries and illnesses. The list included most of the state's largest companies—paper mills, hospitals, nursing homes, retail stores, restaurant chains, including such well-known organizations as L.L. Bean and Friendly's Ice Cream. OSHA gave the 200 a choice. They could join Maine Top 200, a voluntary program in which they would learn to do self-inspections and take responsibility for planning and implementing health and safety improvements. Or they could opt for the existing relationship, in which OSHA would continue playing its "gotcha" role, would place the company on a "primary inspection list" and give it very rigorous and frequent inspections. If they opted to be part of Maine Top 200, OSHA wouldn't levy fines for safety violations as long as the company was making a good-faith effort to eliminate the hazards.

198 of the 200 chose to go to the self inspection route. Because of mergers, acquisitions, and the fact that some didn't meet the requirements for the program, there were 190 employers in the program as of fall, 1995. These 190 included 127,000 employees working at 1,245 locations. The 190 companies represented only 1% of Maine businesses: however, they accounted for 30% of the state's workforce, and 45% of comprehensible injuries, illnesses, and fatalities.

### **How The Program Works**

Those participating in Maine Top 200 had to develop their own proactive, comprehensive plan for improving health and safety at the workplace. OSHA identified the outcomes -- health and safety, elimination of workplace hazards -- and asked employers to determine how to meet those outcomes. It didn't micro manage the companies in any way, but it did require them to ensure extensive employee involvement in writing and carrying out the plan. Those participating in the Top 200 program had to do the following:

1. Show how the employer would deal with the injuries and illnesses that occurred in the workplace.
2. Conduct a baseline inspection of the premises, using OSHA health and safety standards,
3. Develop, within 30 days of the baseline, a plan to abate the hazards identified during the baseline inspection
4. Eliminate the hazards within 12 months, and

5. Report each quarter on its progress

OSHA's role changes dramatically for those in the Top 200 program. The wall separating health and safety inspectors is coming down. Inspectors are working on cross-functional teams, focusing on analysis of the systems and programs the companies put into place to find and eliminate hazards. Rather than try to find hazards, the inspectors are shifting that responsibility to the employers (where it belongs, according to OSHA's enabling legislation), and are adding value through their new roles of teacher, coach, analyst, feedback provider.

Thus, OSHA's relationships are turned around in the Top 200 program. OSHA is no longer in the "gotcha" mode. Rather it acknowledges that "nobody knows the workplace better than the employees" in Bill Freeman's words, that those best positioned to find work hazards are the employees, not OSHA inspectors. OSHA staff still do inspections on the Maine Top 200 companies, but it is a monitoring inspection of the self-inspection process. They randomly select certain sites to visit, review the employer's plan, and determine how well the company is following through on its plan. Most employees and employers view it as a helpful step.

Further, the Top 200 program is based on a key assumption, that employers will take positive action to find and eliminate hazards if given an opportunity, and an incentive to do so. The incentive in this case is the removal of an adversarial relationship with OSHA, one that was time consuming and expensive for employers and for OSHA

**Results To Date:**

Results can be summarized in quantitative as well as qualitative terms. Here are the numbers:

**First Two Years of the Top 200 Program**

- Employees in the 190 participating companies found 180,390 hazards in their workplaces.
- Participating companies corrected over 126,270 of those hazards (70%)
- 65% of the participating employers are seeing reductions in overall injury and illness rates since joining the program.
- Participating companies experienced a 47.3% decrease in compensable claims for worker's compensation; the overall average for all Maine employers was a 27% decrease over the same time period.
- Many companies reported significant reductions in the number of lost work days due to injury or illness. The following data on lost work days are typical:

	1991	1992	1993 (1 <sup>st</sup> year of program)	1994
A Laundry service	468	368	108	51
A Rehab center	491	472	482	88

### **In the 8 Years Prior To the Top 200 Program:**

- OSHA inspectors found 34,000 violations in their inspections of thousands of Maine workplaces, many of which went uncorrected after OSHA's inspections.

### **Four Years After Program Began:**

- OSHA staff did 447 follow-up inspections of the 190 participating companies (a walk-through to see if the hazards identified by company employees were eliminated, plus a review of the companies' efforts to follow their own plans): only 3 companies "failed" (in the sense that they didn't follow through on their own plans, didn't clean up their hazards).
- 120 participating companies have "graduated" from the program, meaning that they followed through on their plans, corrected all hazards, and did all that OSHA asked them to do.
- Participating companies continue to show their results (e.g., finding and eliminating hazards) demonstrated in the first two years.

In qualitative terms, the program is also proving a success. Freeman finds that the team approach is increasing communications among the previously separated specialists. Since the employers are asked to take a comprehensive approach to the abatement of hazards, OSHA staff must break down their own organizational walls and work cross-functionally as well if they are to provide meaningful analysis and assessment of employer efforts.

Previously, when inspectors saw hazards during an inspection they noted it in their reports. It was then up to their supervisor to decide whether to cite the company; the inspector went on to the next inspection. "Our inspectors never saw the results of their work," noted Freeman. "Someone else took over after they left. And when we did a follow-up inspection, it was done by another inspector!" Now, inspectors follow the company from start to finish; they have a sense of ownership for the results. And plant managers, who used to view inspectors as nothing more than meddling bureaucrats, are starting to gain some respect for them.

Further, OSHA staff are taking more of an *outcomes* approach to their job. No longer focused on citations, fines and specific regulations as the ends to be achieved, they are learning to be flexible on the means they use while remaining very focused on the desired outcome of workplace health and safety. As one OSHA compliance officer remarked, "We're finally getting the chance to be safety professionals."

Perhaps most important, the approaches being taken by the participating employers are likely to have lasting impact. Using the traditional adversarial approach, OSHA inspectors saw little improvement in overall workplace health and safety. They identified hazards one at a time, companies often argued and sued when they disagreed, and there was no joint effort toward improvement. Under the Top 200

approach, it is in the employer's interest to develop comprehensive plans for improvement, plans that seek root causes of problems rather than the old one-problem-at-a-time approach. And with the active involvement of employees (and their unions), workers are at no risk when they identify problems and propose solutions.

What about the understandable concerns that some companies will cut corners using the self inspection approach, writing beautiful safety plans but not following through with them? That's a risk, but OSHA-Maine has shown it will deal with it. When one of the participating Maine companies reneged on its commitment and subjected its employees to unsafe and unsanitary conditions, OSHA stepped in quickly with citations and penalties.

## **Customer Feedback**

The program isn't inexpensive to participating companies. "They [the company employees] were much more thorough than any OSHA inspector could have been, because they know the mills so well," according to Glenn Rondeau, manager of safety services at Bowater Inc.'s paper mills. The employee inspection teams at Bowater mills learned that many of the violations they uncovered had been identified by OSHA in an earlier inspection; those hazards hadn't been corrected by the company, or had reappeared after being corrected. Stan Higgins, director of human resources and administration at a Bowater mill commented that his company preferred the self-inspection approach because "it's better to invest in safety and training [to detect and correct violations] for our employees, than pay OSHA fines."

Skip Pratt, safety and security manager for S.D. Warren Co., also praises the program, in part because of its educational value. "In the past there were very few people on site who understood OSHA regulations. I knew this was going to drive a lot of people to become familiar with safety and health...Before [Maine Top 200] we were fairly safety conscious, but there were a lot of things that we didn't realize were safety violations."

Carl Turner, also of S.D. Warren, credits the program for a significant drop in his company's injury rate. "There is a direct connection between the 200 Program and the drop in the accident rate; we spent 18 years under the old OSHA program and nothing happened." Under the [Top 200] program, that's changed, big time. Five in-house inspection teams at the S.D. Warren paper mill found 18,000 violations, 300 of which were potentially life threatening. "It [Top 200] focused our efforts," says Tina Fernald, human resource manager at the company.

In addition to reducing the hazards and injuries, the program improves company performance by bringing labor and management together in a constructive endeavor. As an official at Georgia Pacific notes, "We have joint communications and meet together. I never thought I'd see the day."

## **OSHA-Wide Implementation of the Maine 200 Strategy**

In June, 1995, President Clinton announced that the Maine Top 200 concept (which is now called the Cooperative Compliance Program, or CCP) would be expanded to the rest of the country. Wisconsin has begun using a similar model; the injury rates in the targeted Wisconsin companies dropped 30% in

its first two years. By 1996, OSHA had implemented the CCP in nine more states. It was successful there, and was extended to the rest of the country in December, 1997.

The CCP operates on the same principles as Maine 200. In addition, it takes a more targeted approach to its work. In the past, OSHA was as likely to inspect employers with good health and safety records (as measured by the number of workplace illnesses and injuries) as those with poor ones. Using the new, more targeted approach, employers with high rates of illness and injuries (meaning twice the national average or more) are placed on a High Rate Inspection Targeting List, which means they automatically receive an intensive, time-consuming OSHA inspection. There are over 12,099 employers now on this list. From the list, OSHA puts employers into one of three groups:

**Group I:** employers that join the CCP. They have only a 30% likelihood of being inspected; OSHA is recognizing them for their voluntary cooperation by reducing the inspection burden on them.

**Group II:** small employers (e.g., under 100 employees) that join the CCP. They will have only a 10% chance of being inspected, as long as they use OSHA consulting services.

**Group III:** employers choosing not to participate in the CCP. They remain on OSHA's Primary Inspection list, which means OSHA continues to do thorough inspections of them.

Approximately 500 employers with the highest illness and injury rates, and with a history of very serious violations, are not being offered the CCP. They continue to receive intensive safety and health inspections.

Employers with high rates of workplace illnesses and injuries that join CCP are expected to work collaboratively with their employees and with OSHA in finding, preventing, and ameliorating hazards. If they do receive an inspection it will be shorter than in the past because many of the workplace hazards will have been identified and corrected by the participating employer. If problems are found during the inspections the penalties will be lower (as long as the employer has made a clear effort to support the CCP). And they will not be cited for non-serious violations that are promptly corrected during inspections.

### **Implications of the New Cooperative Compliance Approach**

The change from activity focus to outcomes focus is evident in other OSHA changes. One of the most powerful and important changes: performance measures of OSHA staff. OSHA field offices are now judged on how well they help to reduce injury and illness rates in their jurisdictions, not on the number of citations issued (as was true in the past). And this change in measurement is having an impact. In 1996, OSHA conducted 43% fewer inspections than it did in 1994, a record low 24,024. Yet reported cases of workplace injuries and illnesses fell 3% during that time period.

As far as the Maine OSHA offices, Freeman says his staff would never go back to the old approach. "There was some resistance at first. Going to the team approach was new, it wasn't easy for some to let go of their special expertise area, and it was difficult for some staff to understand how they would be measured and evaluated. With the old approach, they knew we went 'by the numbers – number of

inspections, number of citations, etc. With the new approach we have to create different evaluation methods. But the staff has responded very well. They like working in teams, they like having more discretion in how they manage their time, they like their new roles, and they like the results we're getting from the new program."

## **Maine Top 200 - - Critical Success Factors**

- Education and training -- of employees at participating businesses (who need to learn OSHA regs., what constitutes a violation, etc.), and of OSHA staff.
- Requiring employers to actively involve their employees in planning and implementing the program.
- Changing the role of OSHA inspectors: focusing on training, monitoring, analysis, and using citations and fines as a means to an end, not the end itself; applying tough enforcement as needed, but only after a company has shown it isn't serious about using self inspection.
- Using a targeted approach. Maine Top 200 involves only 1% of the state's businesses, but that 1% includes 30% of the workforce, and almost half of the illnesses and injuries occurring in the state.
- Putting a focus on preventing injuries and illnesses (not just on compliance with the law).
- Customizing the plan -- dealing with a huge company like Boise Cascade requires a different approach than when working with a nursing home.
- Overall, the key to success is the formation of **partnerships** -- between employers, organized labor, employees, and OSHA.
- As with all major changes, senior managers must be involved and committed -- both in the participating companies and in the OSHA office.