3. Dunlop/Corn Administration, 1975-1977: Reform and Professionalization

By early 1975 OSHA was in serious trouble with labor, business, the Congress, and the White House. One of the principal tasks facing President Ford's newly appointed Secretary of Labor, John Dunlop, was that of getting OSHA out of trouble. Dunlop had 30 years of experience in governmental affairs and was an advocate of the kind of regulatory reform Nixon had called for a year earlier. A firm believer in the goals of OSHA, Dunlop considered the agency a victim of mismanagement and was determined to reform it.

Rather than immediately installing a new assistant secretary, Dunlop put John Stender on indefinite leave and brought in two experts — Marshall Miller and Bert Concklin — to provide interim leadership to OSHA while they studied its problems. Miller, a lawyer with experience in government environmental programs, was to make recommendations on policies for standards and other OSHA programs. Concklin, who had a background in business and management, was to be concerned mainly with budget, personnel, and public relations. Stender resigned in July 1975.[26]

During this crucial period a recently completed Ford Foundation study on the politics and economics of job safety and health circulated around OSHA and strongly influenced the direction of reform.[27] Written by Nicholas Ashford of M.I.T., the study stressed that the problem of protecting people on the job was too massive for government to handle alone but required cooperation from all sectors. While the costs of reducing hazards was not cheap, Ashford contended, the benefits to society would far outweigh the outlays. In Ashford's view, health was a more serious but less recognized problem than safety. Also, he recommended that OSHA be headed by a safety and health professional.[28]

After studying the agency and its problems, Concklin and Miller took a number of actions designed to improve OSHA's operations and mollify its liberal critics. They revised the agency's internal management, developed studies of its policies, streamlined the development of standards, and sought to better inform workers and employers of their obligations under the OSH Act. Miller established the policy that announcements of proposed safety and health standards would include background on the issues involved and would list the alternatives considered. Concklin set up a procedure to publicize developments favorable to OSHA, such as a recent survey of Georgia businessmen which reported generally favorable responses to OSHA inspections of their workplaces. In addition, OSHA revised its long dormant national advisory committee and sought to improve its own relations with other safety and health agencies.[29]

One of the most important changes Concklin and Miller introduced was to have OSHA concentrate more effectively on inspecting the most dangerous and unhealthy workplaces. They pointed out that there was no solid evidence that the 80 percent of OSHA's budget that it spent on enforcement was making workplaces any safer. This was because, despite limited earlier efforts such as the "Target Industries" and "Target Health Hazards" programs, OSHA had not systematically aimed its efforts at the 30 percent of all workplaces which reported worker casualties.[30]

As what was intended to be a capstone to their reforms, in November 1975 Concklin and Miller announced a "National Emphasis Program" which would employ a combination of enforcement and educational activities to reduce casualties in highly hazardous industries. To start off, OSHA chose to focus on foundries and metal casting and stamping operations. The program included special training of inspectors and assistance to state governments, industry, unions and others to achieve voluntary compliance.[31]

Problems of safety and health in the workplace did not, of course, go away while OSHA was trying to put its house in order in 1975. The new leadership had to act on a number of major issues, most of them already under consideration at OSHA. The most important actions OSHA took in this period were the issuance of proposed new standards for coke oven emissions and airborne lead. Under pressure from the unions, OSHA also committed itself to preparing a tougher standard for cotton dust and held hearings on the noise proposal John Stender had introduced. OSHA once again resumed sifting through its consensus standards to weed out nuisance rules.

In an unusual flurry of activity in the fall of 1975, OSHA issued several proposals for health standards. In addition to the one for lead, proposals came out to regulate asbestos, beryllium and a number of industrial chemicals. George Taylor of the AFL-CIO commented that "the logjam appears broken." The "break", however, was not the result of reforms in OSHA's procedures, but rather stemmed from its desire to avoid time consuming IIS's. Secretary Dunlop had secured permission from the White House to publish any proposed standards that were ready by September 30 without IIS's, though these might have to be supplied later.[32]

Efforts to reform OSHA in 1975 mollified congressional and other critics somewhat, but it also raised their expectations for significant progress. The departmental appropriations bill Congress passed in the fall of that year called for improvement in the professional competence of OSHA's inspectors and for more effective enforcement. Congress also ordered the agency to set clear guidelines governing which workplaces would be inspected first, it called for the elimination of irrelevant standards, and it urged OSHA to place greater emphasis on health problems. Many of these goals had already been adopted by OSHA's new management team, but Congress was clearly putting the agency on notice that it intended to see that these goals were realized.[33]

The key to successfully rescuing OSHA from intense criticism by Congress and others was to find a highly qualified person to head the agency and guide it out of troubled waters. Dunlop decided to follow Nicholas Ashford's recommendation that that person be a safety and health professional. Concklin and Miller were given the job of finding him or her. Their search led to a professor of occupational health and chemical engineering at the University of Pittsburgh named Morton Corn. With special expertise in health, wide experience as a consultant with management and labor, impressive professional credentials, and a record of active participation in national and international health organizations, Corn seemed well qualified for the job.[34]

Corn's nomination in October 1975 was well received. Businessmen liked him because he emphasized cooperation rather than conflict among groups concerned with job safety and health. Senator Richard Schweiker from Pennsylvania felt that Corn's nomination was non political. He said, "I do not know the doctor's politics, nor do I want to know them." Sheldon Samuels of the AFL-CIO termed Corn's appointment "exactly the kind...designed for the job," but cautioned that "time will tell....He's been tested professionally, but never politically."[35]

After Corn was sworn in as the new head of OSHA in December, the critics gave him a brief grace period to allow him time to try to point OSHA in the right direction. Although he subscribed to the policies already put in place by John Dunlop and his aides, Corn had a definite approach to the agency. He was outspoken and articulate in his views and he believed that OSHA was at a crucial phase in its history. As he said shortly after taking the reins at the agency:

"The reason I'm in this job is that... Dunlop and others convinced me that the very survival of OSHA was at stake — that the whole Act might be repealed... I think the manner in which this agency proceeded...alienated so many people that the Congress... was ready to take corrective action. And if it were not for promises of new procedures...we wouldn't have been given a new lease on life."[36]

Corn himself had criticized the agency in the past. He felt that it had operated:

"... in a style that professionals would not subscribe to. I've watched OSHA from the outside with great concern. I had no contact with this agency in its first four years — that was not accidental. Many professionals didn't want contact with OSHA."[37]

One of Corn's immediate goals was to improve OSHA's relations with groups in and out of the government. Early visits to Capitol Hill scared him because of the lack of comprehension there of the agency and its mission. He immediately ordered an upgrading of the agency's congressional affairs staff.[38] Corn also sought quick improvement in OSHA's communications with state governments, labor, management and others. He wanted to bring everyone he could into his office to sit down and talk.[39] Even before he was officially the head of OSHA, he met with various groups and asked them about their problems and concerns. Just after the Senate had voted to confirm his nomination, Corn met with a group of state government officials who were amazed that he took the time to talk with them about their problems.[40]

Corn's seeming preoccupation with OSHA's outside relations was the result of a course of events that had made OSHA itself as much of a public issue as death, illness and injury on the job. Corn, however, had not really lost his perspective. His over riding goal was to focus on serious hazards in general, and health hazards in particular. Corn told a reporter, "I believe we should focus on real hazards."[41] In order to make it easier for OSHA to set standards once it determined what the most serious hazards were, he proposed to investigate alternatives to the current, slow paced program of developing one standard at a time.[42]

Controversy over OSHA's health standards had come to center around economic feasibility — the cost of compliance. Corn described his position on costs and standards as follows:

"I think first of all the agency has an obligation, one which I feel very strongly, to state in a standard the scientific facts — what is the safe level based on the best available evidence. That obligation cannot be ignored and... should be in the forefront of anything OSHA does. Having done that, we then must decide how we can meet that goal at bearable costs."[43]

Corn's policy was that the period of time which industry was given in order to meet a safety or health standard could be lengthened to give hard pressed companies time to meet the standard without suffering unduly. He recognized that some companies might find it less burdensome than others to comply and he would allow for this in setting the abatement periods. Corn maintained that in this way economic considerations could be recognized with no sacrifice of health or safety.[44]

Combining this type of flexibility and consultation with concerned groups, Corn planned to involve them in the whole standards setting process, from start to finish. Rather than surprising the affected parties by announcing a proposed standard of which they had no advance knowledge, Corn thought OSHA should consult regularly with them during the whole drafting process. The result, Corn believed, would be greater acceptance of and compliance with standards once they were promulgated.[45]

Shortly after Corn took over, a highly publicized workplace tragedy brought out in bold relief the kinds of problems that Corn had been hired to deal with. Around New Year's Day 1976 the news media gave national publicity to the poisoning of workers at a recently closed small chemical plant in Hopewell, Virginia, that had manufactured a pesticide called "kepone." A total of 29 workers were hospitalized with nerve damage. At congressional hearings in January it was revealed that OSHA had fumbled an early opportunity to detect the kepone danger. A worker from the plant had tried to file a health complaint at a local OSHA office. OSHA, however, treated his case as one of job discrimination, since he had been fired, and did not recognize or follow up on the health aspect.

The kepone tragedy gave added urgency to Corn's whole agenda of OSHA reform, particularly to a goal he had expressed at his swearing in ceremony of raising the professional competence of the agency. Besides hiring only highly qualified inspectors, Corn improved the qualifications and competence of those already on the OSHA staff through special training programs. He also began to train safety inspectors — the bulk of OSHA's inspection force — in the basics of occupational health. Corn was well aware of employers' complaints about nit picking and obnoxious inspectors. To deal with the nit picking he had inspectors concentrate on the most serious hazards. To deal with the "OSHA Ogre" image, he began something called "comportment training" (known more informally in the agency as "'couth' lessons"). To rectify OSHA's failure to provide the technical information needed in enforcing complex safety and health standards and in dealing with hazards like kepone, Corn developed a technical data center to answer questions from inspectors in the field so they could make quick decisions based on up to date information.[46]

With the kepone affair as its kickoff, Corn's short tenure was marked by a great deal of activity and innovation. It was disrupted at the outset not only by kepone but also by the resignation of Secretary Dunlop in January 1976 over President Ford's veto of a labor bill which Dunlop had strongly supported, and it ended barely a year after it began when Ford was defeated in his bid for a second term. The most important action to protect workers' health was a controversial standard OSHA issued in October 1976 for coke oven emissions after five years of development and delay. The standard required engineering controls, which made it very expensive for industry to comply. In December OSHA proposed a revised standard for cotton dust that also required engineering controls, though these were to be phased in over a seven year period. The most innovative action was the development of a proposal, published only after Corn had departed, for a generic standard for carcinogenic substances. Corn sought to improve OSHA's relations with the National Institute for Occupational Safety and Health (NIOSH) — a separate research agency created by the OSH Act — and streamlined OSHA's review of and response to recommendations from the Institute for regulation of particular health hazards. The last major action was an agency reorganization that reflected the increased emphasis on occupational health and that provided greater technical support to the agency's staff.

The election year politics of 1976 put great pressure on OSHA throughout Corn's tenure, partly because President Ford faced a stiff challenge for the Republican presidential nomination from Ronald Reagan, a strong critic of federal regulation. The White House, in turn, became increasingly critical of OSHA. In January word leaked out of an attack on OSHA in a draft of the annual Economic Report of the President. The report criticized the agency for making industry spend billions of dollars a year on safety measures which, it alleged, had little effect on accident rates. This angered Corn and many supporters of OSHA. The White House yielded and withdrew the offending statements from the final draft. As the pace of the presidential campaign stepped up in early 1976, the president and business groups made the agency a target in attacks on government regulation. In the New Hampshire presidential primary election, Ford told a business audience that some businessmen wanted to "throw OSHA into the ocean." He promised he would not allow "the unnecessary and unjustified harassment of citizens" and told the group that he had ordered the agency to treat citizens as "friends, not enemies."[47]

The culmination of the tug of war between the Ford Administration and OSHA came over a proposed White House Task Force on federal regulatory agencies. The idea for such a group originated in February when President Ford outlined a program for regulatory reform involving both long term legislative action and modifications in current programs in the agencies. It was decided that the OSHA effort would deal with the safety standards revision project of simplifying OSHA's consensus standards.

On May 13, the President announced the creation of task forces for OSHA and other agencies. Their main purpose, he said, was to "simplify and streamline" federal regulations. "The Congress had given these agencies a job to do," Ford said, "but they can do that job without needlessly harassing the American businessman."[48] At the same time, there was concern at OSHA and among organized labor that the task force would be used to investigate and interfere with the agency.[49]

Corn convinced Secretary Willie J. Usery that the task force should be kept limited in scope. He wanted to have its duties spelled out in writing and its activities confined to OSHA programs already in operation. In meetings with White House staff, OSHA insisted that the task force be advisory only, with no authority of its own. Announced on June 11, this plan limited the task force to working on the standards revision project only.[50] Other than recommending technical changes in some safety standards, the task force had little effect on OSHA by the time it completed its work.[51]

Meanwhile, organized labor monitored OSHA closely to see that it did not go too far with deregulation. When OSHA announced that it would have to delay issuance of new standards on asbestos, ammonia, lead, arsenic, cotton dust and other substances until after November, the OCAW immediately sued to block the delays and AFL-CIO president George Meany called for an immediate public explanation from Secretary Usery. The Secretary assured Meany that he shared his concern for a safe and healthful workplace and that the delays were purely a result of the difficulty in analyzing the technical issues involved in the standards.[52] In a move that must have been reassuring to labor, OSHA issued a group of voluntary guidelines for lead, mercury and silica to be used until permanent standards were issued. The guidelines called for relatively inexpensive measures such as medical examinations for exposed workers and use of personal protective equipment.[53]

Another issue of concern to organized labor arose when, at the request of the Interior Department, OSHA transferred its jurisdiction over a group of cement workers to Interior's Mine Enforcement and Safety Administration (MESA). The Cement Workers Union, half of whose members were affected, protested and George Meany complained to Usery. Meany considered the 1966 mine safety law that Interior enforced to be ineffective and feared that the transfer would set a precedent for reducing the number of workers protected by the Act.[54] Usery responded that OSHA had no choice in the matter because MESA had the legal right to extend its jurisdiction to cover these cement workers. However, he told Meany that the Labor Department was taking special pains to spell out the cement workers arrangement. (Ironically, the whole transfer was negated in 1978 when Congress transferred all mining safety and health duties into the Labor Department under the new Mine Safety and Health Administration).[55]

Morton Corn was not retained as head of OSHA by the incoming Carter Administration in 1977 and he left office a week before the inauguration. Corn sent Usery a final report on his activities at OSHA. While the bulk of the report was a straightforward discussion of Corn's safety and health policies, the problems facing OSHA, and so on, the portion that drew the most attention was his charge that there was a lack of highly qualified technical personnel at OSHA. Staff members retorted that there were many qualified experts there but Corn had failed to utilize them. Lost in the controversy was a remark Corn made shortly before leaving the agency in which he conceded that OSHA had begun "the slow climb to quality."[56]

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