‘Letting the foxes guard the henhouse’

Inspections *from 18XX*

Silverstein, who served as OSHA policy director from 1993 to 1995. “I think OSHA is not a factor in many companies’ decision-making. Their presence is neither seen nor felt.”

Declining scrutiny

OSHA was created in 1971 following congressional hearings that highlighted dangerous working conditions. Congress told the agency to craft and enforce regulations to protect workers.

Regulators recommended that plants in high-hazard industries – including poultry – be randomly inspected once every two years.

That’s not happening. Today, many of the nation’s more than 500 poultry plants go far longer between OSHA inspections. Some processing plants, including Wayne Farms in Dobson, N.C., haven’t been inspected since 2000.

In 2006, regulators conducted 94 inspections at poultry plants – about half the number done in 1999. That works out to about one inspection for every five poultry plants.

And when inspectors do visit poultry plants, they tend to spend less time inside them. From 1999 to 2006, the number of comprehensive inspections – where federal or state OSHA officials examined an entire poultry plant – dropped from 71 to 22.

Regulators say they’re visiting fewer poultry processors because most have become safer; the industry’s reported injury and illness rates have dropped by more than half since 1999. OSHA now reserves its broadest inspections for the plants with the most reported injuries.

“I’m not convinced from the data that our approach is not working,” said Richard Fairfax, OSHA’s director of enforcement.

But the Observer found that the statistics are misleading because injuries inside poultry plants are going unreported. OSHA requires companies to record injuries but rarely checks whether the reports are accurate.

Bob Whitmore, a veteran director of OSHA’s national injury record-keeping system, noted that some poultry plants have reported no injuries for an entire year, a claim he finds implausible.

“Using such highly suspect data to drive your inspection program is akin to letting the foxes guard the henhouse,” said Whitmore, who has studied injury statistics for two decades. “Faulty data leads to faulty conclusions and then faulty decision-making.”

Unkept promises

OSHA once tried to regulate musculoskeletal disorders (MSDs), the most common workplace injuries in American factories.

In 1990, U.S. Labor Secretary Elizabeth Dole announced “a major initiative” to prevent those injuries. After a decade of research and debate, OSHA in January 2001 issued a collection of rules – known as the “ergonomics standard” – that required employers to address hazards likely to cause sprains, strains and repetitive motion injuries.

But under intense lobbying from businesses, Congress and President Bush repealed the regulations two months after they took effect.

Half the states – including the Carolinas – run their own OSHA programs, and were free to enact their own rules. N.C. Labor Commissioner Cherie Berry scrapped the state’s version of the regulations the same month Congress rescinded the federal rules. Opponents said compliance costs would have devastated small businesses.

When the standard was scrapped, inspectors lost their most promising tool for enforcing ergonomic violations. But they still had what’s called the “general duty clause.”

This longstanding provision allows regulators to penalize companies for workplace hazards not spelled out in other OSHA regulations. To document such violations, inspectors may interview workers and hire experts to determine, for instance, whether conditions inside a factory are likely to cause MSDs. The process can take months.

A year after the ergonomics standard was repealed, Labor Secretary Elaine Chao said her agency would use the general duty clause as part of a comprehensive strategy to battle MSDs.

But since that 2002 announcement, federal and state agencies have penalized companies for ergonomic problems about six times a year, on average. Those cited included nursing homes and manufacturers, but none of the companies were poultry processors.

Regulators once were far more aggressive about pursuing such cases. That was particularly true from 1989 to 1992, under the first President Bush, when state and federal OSHA inspectors issued an average of almost 250 ergonomic citations annually.

Hamlet’s deadly poultry fire | Video story at www.charlotte.com/poultry

North Carolina’s largest workplace disaster in 1991 prompted better protection for workers. Today, regulators aren’t watching poultry plants as closely. Learn more online.

AP FILE PHOTO

Lula Smith reacts after learning a family member was among the 25 workers killed in a fire at the Imperial Food Products plant in Hamlet in 1991.

190	94
14	9
36	1

Serious violations, low fines

OSHA fines in the Carolinas trail those in the U.S. Following are average fines for serious violations in the poultry industry:

Nationally:	$1,100
North Carolina:	$500
South Carolina:	$300

Note: The averages fines are based on all serious violations against poultry companies. Average fines are rounded.

SOURCE: Observer analysis of Occupational Safety and Health Administration data.

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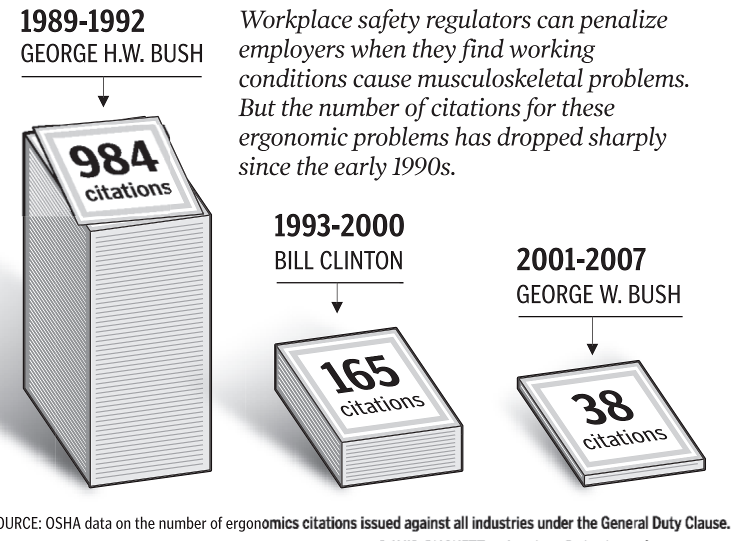
Ergonomics citations plummet

Workplace safety regulators can penalize employers when they find working conditions cause musculoskeletal problems. But the number of citations for these ergonomic problems has dropped sharply since the early 1990s.



SOURCE: OSHA data on the number of ergonomics citations issued against all industries under the General Duty Clause.

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Enforcement began to decline sharply under the Clinton administration, when OSHA agencies handed out an average of about 21 ergonomic citations per year. In recent years, the penalties became even more rare; just six ergonomic citations were issued in 2007, all but one of them in Puerto Rico.

The U.S. Labor Department didn’t make Secretary Chao available to comment for this story. Fairfax, OSHA’s enforcement director, said it can be difficult to cite companies under the general duty clause because the courts have set “a fairly high burden of proof.”

Today, OSHA officials say they still look for ergonomic hazards during inspections. When regulators find problems, they send letters informing employers of the hazards and detailing “possible measures” they can take to protect employees, an agency spokesman said. From 2002 to mid-2007, federal OSHA mailed about 580 such letters, five to poultry plants.

Critics say OSHA needs to be more aggressive.

“They’ve turned their backs on a significant workplace problem,” said AFL-CIO safety director Peg Seminario. “Workers in the poultry industry are left on their own.”

A ‘blind eye’

It used to be easier for the government to track injuries caused by repetitive work. OSHA once required companies to record those ailments in a separate column on workplace injury logs – documents that regulators examine to look for trends.

Faced with a legal challenge from manufacturers, OSHA removed the column in 2002. Companies still had to report these ailments but could include them with other injuries.

That made it harder for regulators to detect patterns – and easier for businesses to hide such disorders.

The cumulative effect of removing the column and killing the ergonomics standard was to “turn a blind eye to a lot of what happens in poultry plants,” said Charles Jeffress, who led OSHA from 1997 to 2001.

The number of repetitive motion injuries reported at some factories plunged. In 2001, for example, Tyson Foods’ Clarksville, Ark., plant reported more than 150 injuries associated with “repeated trauma,” according to injury logs obtained by the Observer. Two years later, the plant reported fewer than 10.

Asked about the decline, Tyson spokesman Gary Mickelson said managers have made the 1,300-employee plant safer by introducing adjustable work stands, a job rotation system and equipment to eliminate lifting. But the company declined to answer some of the Observer’s questions – such as how much work is still done by hand.

Jeffress and other workplace safety experts said they believe some companies are keeping repetitive motion ailments off logs to avoid inspections and fend off future regulatory attempts.

“One way to keep OSHA off your back: Deny the evidence,” Jeffress said. “Don’t write down the evidence. Don’t record it.”

Little deterrent

Even when inspectors do find problems, poultry companies frequently avoid stiff penalties.

About three-quarters of fines proposed against poultry companies have been lowered or eliminated during the past decade. While the average proposed fine for each serious violation in the poultry industry has been about $2,300 in recent years, companies wind up paying an average of about $1,100. Tyson Foods, a multi-billion-dollar company, earns that much profit every three minutes.

Low OSHA fines and large penalty reductions aren’t unique to the poultry industry. OSHA officials say they often reduce fines in exchange for an employer’s promise to fix problems promptly. When employers contest citations, safety problems may not be addressed for months or years, they say.

Regulators note that the law limits the size of fines they can impose. For a “serious” violation, for instance, OSHA can’t fine a company more than $7,000.

Regulators can impose far stiffer fines – up to $70,000 per violation – if they determine a company’s breach to be “willful.” Such violations also hurt a company’s reputation and make it harder to win contracts. But OSHA rarely uses that tool. Only about one of every 200 violations in the poultry industry is designated as willful, the Observer found.

Visiting Tyson Foods’ Wilkesboro, N.C., plants in 2001, state OSHA inspectors found more than 30 violations, including hazards that could have led to amputations, fractures and deadly falls. Regulators proposed about $13,000 in fines, but dropped it to less than $1,800.

“It’s aggravating to see that happen,” said Rebecca Israel, one of the N.C. OSHA inspectors who visited the plant. “...Do (companies) get the message? I don’t know that they do.”

OSHA also reduced fines against Tyson when, in 2003 and 2004, two of the company’s Wilkesboro employees died in workplace accidents – deaths that regulators determined the company might have prevented. The final penalties in each case: $2,500.

Tyson officials say they’ve taken additional steps to ensure the safety of workers. “There’s nothing more important to us than the safety and well-being of our people,” company spokesman Mickelson wrote in an e-mail.

OSHA officials say most companies work hard to make their plants safe without the threat of inspections and huge fines. That reflects a philosophical shift inside the agency. Since the late 1990s, OSHA has devoted more money and attention to programs that let companies voluntarily comply with workplace safety laws. Companies that participate in such programs are exempt from penalties if regulators find violations.

Former OSHA chief Jerry Scannell, who served under the first President Bush, said there are times when only a steep penalty will prompt a company to change.

But many of today’s fines don’t make companies flinch, he said.

“It’s always very disturbing when you hear or read about workers so severely injured they’ll never work again. And you hear the penalty was just $3,000,” Scannell said. “No question, it doesn’t pinch the corporate bottom line. And you say, ‘It should.’ ”

House of Raeford

The privately held company, based in Raeford, is among the top 10 U.S. chicken and turkey producers.

Chairman: Marvin Johnson.

Size: Eight processing plants and 6,000 employees.

Customers:

- **Restaurants** including Blimpie, Golden Corral and Ryan’s.
- **Schools** around the U.S., including Charlotte-Mecklenburg Schools.
- **Stores** including Food Lion and Lowes Foods. The company’s deli meat is marketed under the name “Lakewood Plantation.”

Sources: Observer research, House of Raeford, Dun & Bradstreet, Watt Publishing, National Poultry and Food Distributors Association

> “It’s really a national tragedy that OSHA is so invisible, so silent these days.”
>
> **DR. MICHAEL SILVERSTEIN,** POLICY DIRECTOR FOR OSHA FROM 1993 TO 1995