

## MANAGING AND CONDUCTING PUBLIC HEALTH INSPECTIONS: A SELECTED BIBLIOGRAPHY AND TOPICAL OUTLINE

### Abstract:

Field inspections are a central element of many public health programs including nursing home and day care regulation, worker health and safety, food service regulation, and nuclear reactor safety. This bibliography brings together writings that address the planning, staffing, conducting, and supervising of inspections where one inspector or at most a small group of inspectors seeks compliance with regulations or standards at a site removed from the agency's offices. It includes research, descriptive materials, and management or prescriptive writings. Where work on nonpublic health inspection has important lessons for public health programs, that work is cited. Section I of the bibliography presents an annotated listing of all works located which address the issue of field inspections and Section II presents a topical outline of the literature presented in Section I.

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# TABLE OF CONTENTS

INTRODUCTION .....	
I. ANNOTATED BIBLIOGRAPHY .....	
TOPICAL OUTLINE .....	
THE ROLE OF THE AGENCY IN DETERMINING INSPECTION STYLE .....	
1.1 .....	CU
1.1.1 THEORIES OF AGENCY CULTURE .....	
1.1.2 LEGISLATIVE MANDATE .....	
1.1.3 GOALS AND VALUES OF THE AGENCY .....	
1.1.4 COMPLIANCE V. DETERRENCE STRATEGIES .....	
1.2 .....	AG
1.2.1 AGENCY RELATIONS WITH OTHER GROUPS .....	
1.2.2 RELATIONS WITH NON-GOVERNMENTAL GROUPS .....	
1.3 .....	MA
1.3.1 MANAGEMENT OF AGENCY FIELD OPERATIONS .....	

1.3.2	INSPECTION MANAGEMENT .....	
1.3.3	INSPECTOR MANAGEMENT/METHODS AND CONSTRAINTS .....	
	ROLE OF THE INSPECTOR IN DETERMINING INSPECTION METHOD AND STYLE .....	
2.1	PERSONAL ATTRIBUTES .....	
2.1.1	BACKGROUND .....	
2.1.2	CAREER GOALS .....	
2.1.3	QUALITY OF THE INSPECTOR'S JOB .....	
2.2	INSPECTORS' RELATIONSHIPS .....	62
2.2.1	INSPECTORS' RELATIONS WITH. THE INSPECTED/CAPTURE/INTIMIDATION .....	62
2.2.2	INSPECTORS' RELATIONSHIPS WITH THE PROTECTED GROUPS .....	65
2.2.3	AGENCY MANAGEMENT .....	66
2.2.4	PEER RELATIONS .....	67
2.3	INSPECTION METHOD/CONSTRAINTS .....	67
2.3.1	INSPECTOR USE OF COOPERATIVE/COMPLIANCE	

STRATEGY _____	68
2.3.2 INSPECTOR FLEXIBILITY/PROFESSIONAL JUDGEMENT _____	70
2.3.3 ADEQUACY OF INSPECTOR TIME/RESOURCES	73
2.3.4 ADEQUACY OF INSPECTOR'S KNOWLEDGE/TRAINING/METHODS/SCOPE	74
2.3.5 INSPECTOR'S ROLE IN PROTEST RESOLUTION/RULE INTERPRETATION .....	76
2.3.6 FACTORS AFFECTING INSPECTION INTENSITY .	76
LIST OF ACRONYMS .....	79

## INTRODUCTION

This bibliography grew out of an effort to review and understand the literature on managing public health field inspections. As such, it seeks to bring together writings that address the planning, staffing, conducting, and supervising of inspections. Typically one inspector, or at most a small team of inspectors, seeks compliance with a body of regulations or standards at a site or sites removed from the agency's offices. The bibliography includes research, descriptive materials, and management or prescriptive writings. Where work on non-public health inspection has important application to public health programs, that work is cited.

Field inspections are the central element in many public health programs including nursing home and day care regulation, worker health and safety, food service regulation, and nuclear reactor safety. However, the literature on field inspections does not exist as a unified or easily identifiable body, only a few authors having made the inspection process their main focus. More commonly, analyses of the inspection process are scattered throughout works addressing broader issues such as regulation, the quality and accessibility of public services, or the administration of public agencies. Works dealing with these issues have been included only if they enlighten the issues of inspection. And because discussion of inspections is so often imbedded in broader works, no claim is made that this listing is exhaustive. Furthermore, a number of included articles are from drafts, unpublished sources, or published sources of limited distribution.

Section I of the bibliography presents, in alphabetical order, an annotated Listing of all works located which address the issue of inspections. For journal articles and book chapters, the published abstract is used when available, otherwise the annotations draw upon the author's problem statement, analysis, and conclusions. In all cases, an attempt has been made to provide a brief but comprehensive overview of the work adhering to the published text to the greatest extent possible. We summarize fact, interpretation and opinion as presented by the authors. Although we present the authors' statements, we do not necessarily agree with or support them. Because we believe that experience in one kind of inspection may be relevant to all inspection programs and because the issue of inspection cuts across agency and industry boundaries, no attempt has been made to use those categories to subdivide this bibliography.

Section II presents a topical outline of the literature presented in Section I. Not all works included in Section I are referenced in Section II. In particular, those providing a very broad view of the issues, or which themselves review an aspect of the literature, are not referenced in Section II. We have attempted to synthesize faithfully the authors' presentations, using the authors' own words where possible, with a minimum of editorial interpretation. Users are cautioned, however, that a full and accurate interpretation of

1

the authors' statements will require reading the original text. Introductory comments are included at the beginning of major sub-sections to explain their organizing principles. The analytical framework used in Section II is, of course, only one of many that could be applied. It

is hoped, however, that this structure will both aid readers in gaining a rapid overview of the literature and serve as a map to assist them in focusing on subareas of particular interest.

It is evident from the sparseness and disjointedness of this literature that much theoretical and empirical research remains to be done before one can approach the management of public health inspections in a scientific manner. This constitutes a major gap in our ability to design public policy about regulation, for many important regulatory programs rely heavily on field inspections. It appears that a disproportionate amount of attention has been directed to employing the results of field inspections as compared to managing the inspections themselves. Research on inspection deserves attention commensurate with the importance of field inspections in the world of regulation. We suggest three steps:

1. A taxonomy of inspection programs should be developed so that descriptive studies can be understood and compared,
2. Research should measure and compare the impact of different aspects of inspection on the effectiveness of enforcement programs, including training and deployment of inspectors, inspection targeting and scheduling, to inspector discretion and supervision of inspectors.
3. The results of this research should be conveyed to those who design and manage inspection programs so that they understand the options available to improve compliance.

## ANNOTATED BIBLIOGRAPHY

**Appleson, G.** (1982, October). U.S. Can Be Liable for Faulty OSHA Inspections. American Bar Association Journal, 68:1210-1211.

This item reviews a decision of the District Court for the Eastern District of Pennsylvania ruled in *Blessing v. U.S.* (447 F. Supp. 1160, 1978) in which it was ruled that negligent inspections by OSHA personnel could render the United States liable for subsequent injuries. The court said plaintiffs have a cause of action if they allege either reliance on the OSHA inspection by employer on employee or increased risk of harm.

**Auditor of the Commonwealth of Massachusetts** (1988, July 1). State Auditor's Report on the Activities of the Department of Public Health's Food Establishment Sanitation Program to June 30, 1987. Commonwealth of Massachusetts.

On average, Massachusetts Department of Public Health (DPH) and Food and Drug Administration inspectors find almost 3 to 4 times as many health code violations, per inspection, than do local inspectors. Based on its review of thirteen DPH audits of local programs, the report concludes that local programs are having difficulties enforcing the State sanitary code and that local inspection results generally reflect higher sanitation levels than found in state audit inspections. Greater support and oversight in terms of training, audits, and reporting requirements are needed from DPH, requiring greater financial commitment from the Massachusetts Legislature and Administration.

**Bardach, E. and R. A. Kagan** (1982). *Going By the Book: The Problem of Regulatory Unreasonableness*. Philadelphia, Temple University Press.

The authors of this book interviewed executives of small and large businesses, regulatory agency officials, and field inspectors to identify and analyze successful and unsuccessful approaches to enforcing regulation. The authors argue that successful enforcement includes informal problem-solving with the regulated establishment, and flexibility in applying the rules. The ideal inspector would have the capacity to empathize with the inspectee, while retaining strong enforcement tools to be used selectively. He would need to be knowledgeable about the industry in order to exercise discretion wisely. The authors sharply criticize rigid enforcement models that bind inspectors to forms and checklists, as antagonistic and therefore ultimately ineffective.

**Boden, L. I.** (1989). *Unlocking OSHA's Potential: An Inspection Strategy for the 1990's. Occupational Health in the 1990's*, New York Academy of Sciences.

Studies of OSHA consistently indicate that the agency's inspections have had little or no

impact on workplace injury rates. The basic reason for OSHA's ineffectiveness is its excessive reliance on enforcement of health and safety standards. Because penalties are low and firms can expect to see an inspector less than once every five years, the impact of enforcement activity is necessarily limited. Neither the size of penalties nor the number of inspections is likely to be greatly increased in the near future. However, the participation of workers in the inspection process can be increased. For this to be effective, additional legal rights, training, and employee protection against recriminations would be needed. The author presents a number of foreign models of worker participation.

**Braithwaite, J.** (1985). To Punish or Persuade' Enforcement of Coal Mine Safety. Albany: State University of New York Press\_

In this book, the author declares that coal mine disasters are usually the result of corporate crime. He surveys 39 coal mine disasters from around the world, including 19 in the United States since 1960, and concludes that mine fatalities are usually not caused by human error or the unstoppable forces of nature. He proposes that a combination of punitive and educative measures taken against offenders can have substantial effects in reducing injuries. Braithwaite develops a model for determining the optimal mix of punishment and persuasion to maximize mine safety and provides regulatory agencies in general with a model for mixing the two strategies to ensure compliance with the law. The book looks at coal mine safety in the United States, Great Britain, Australia, France, Belgium, and Japan. It examines closely the five American coal mining companies with the best safety performance. The author also analyzes the safety records of unionized and non-unionized mines and examines the ways in which enforcement of safety regulation impacts productivity.

**Butler, P. A.** (1979). Assuring the Quality of Care and Life in Nursing Homes: The Dilemma of Enforcement. North Carolina Law Review, 57:1317-1382.

This article examines legal, political, and practical obstacles to improving the quality of nursing home care, including budgetary limitations and limited enforcement powers of regulatory agencies, lack of economic 'incentives for nursing home operators, and lack of public involvement in the enforcement process. Butler recommends ways in which regulatory agencies and the public can improve quality of care, including well-designed patient-focused standards, reimbursement that is related to outcome, licensing remedies, a citation-penalty system, and publicity of information concerning facility compliance.

**Carson, G.** (1970, July). Some Sociological Aspects of Strict Liability and the Enforcement of Factory Legislation. Modern Law Review, 33:396-412.

The paper reports the result of a survey conducted by the author in the late 1960's of 200 randomly selected firms in one British Factory Inspectorate district. Although designed primarily for other purposes, the survey asked questions that the author used to relate



regulatory vigor to the perception of “moral fault.” The evidence presented suggest that “moral fault” played a significant part in shaping the action taken against offenders.

**Christianson, J. B.** (1979). Long-term Care Standards: Enforcement and Compliance. *Journal of Health Policy, Politics, and Law*, 4 ( 3 ) : 4 1 4 - 4 3 4 .

This paper discusses the regulation of long-term care in the United States. First, it addresses alternate models of regulation that could explain both enforcer and provider actions. Then it describes in more detail the incentives for enforcement of regulatory standards. Empirical evidence concerning the effect of regulation on provider incomes and the relationship between reported compliance with standards and provider operating costs is examined. In the latter case, the evidence is consistent with a self-interest theory of behavior for regulatory agencies and inspectors. Ideas for reform of the long-term care marketplace are summarized in the concluding section, with emphasis on their probable impact on enforcement of standards.

**Committee on Government Operations, U.S. House of Representatives** (1984). FDA’s Monitoring of Pesticide Residues in the Nation’s Food Supply: Lessons From the Ethylene Dibromide (EDE) Experience. U.S. Government Printing Office, Washington, DC, (HR 98-1165).

While the EPA has the responsibility for establishing-pesticide tolerances, the FDA is charged with the responsibility for sampling food for pesticide residues. The committee believes that the FDA should have been alert to the need for sampling to determine whether limits on the presence of EDB residues in the food chain needed to be established. The committee finds that the FDA’s failure to monitor for contamination of the nation’s food supply is attributable to deficiencies in the FDA’s administrative performance, not to a lack of sufficiently sophisticated methods of detection. The committee’s recommendations include that the FDA ensure that Surveillance Index documents used to establish monitoring priorities be prepared for all registered pesticides; that the FDA expand its special survey program to assess the adequacy of federal regulation of pesticide residues; that the FDA be provided the resources necessary to develop, refine, and apply appropriate analytical methods of detection; and the FDA establish ‘procedures for coordinating its pesticide monitoring activities with the regulatory programs of the EPA.

**Comptroller General, USGAO** (1985). Report to the Congress: Strong Leadership Needed to Improve Management at the Department of Labor. (GAO/HRD-86-12).

This is one in a series of GAO reports evaluating management effectiveness at major cabinet-level departments and agencies. The last five years have been a period of significant change for the Department of Labor. Several of the Department of Labor’s missions have been redefined or refocused; its budget and work force have been substantially reduced; and key constituent groups have questioned the effectiveness of some of its major programs. The Department of Labor has taken several positive steps to address its

management problems. However, the Department of Labor needs stronger leadership to address more effectively these problems and improve its performance and image. It also needs to strengthen management of its work force and financial operations. Soon after taking office, Secretary Brock acted to address the management problems the GAO identified and demonstrated the degree of commitment and support the GAO believes is essential to improve the Department of Labor's management.

**Comptroller General, MCA. (1984). Report to the Chairman. Subcommittee on Oversight and Investigations. House Committee on Energy and Commerce: Legislative Changes and Administrative Improvements Should be Considered For the FDA To Better Protect The Public From Adulterated Food Products, (HRD-84-61).**

Some adulterated food products identified by the Food and Drug Administration (FDA) occasionally enter the market. The amount of such adulterated products entering the market could be reduced if the FDA had authority to require food producers or distributors to refrain from marketing those products, while the FDA processes a formal seizure order through the courts. In addition, the FDA's attempts to determine the cause of product adulteration and recover such products after they have been distributed or sold are hampered because it lacks authority to review a firm's- production and shipping records. The Congress should consider amending the Federal Food, Drug, and Cosmetic Act to give the FDA these additional authorities. Criminal prosecutions (by the FDA) have resulted in small fines. The maximum fine per violation was established by law in 1938 and has been eroded by inflation. The Congress should consider increasing the maximum fine to permit greater flexibility in assessing-penalties. This report also recommends actions the FDA should take to improve the timeliness of the process for seizing adulterated food products and verify the destruction or reconditioning of recalled foods.

**Comptroller General, USGAD (1981). Report to the Congress: Improving Sanitation and Federal Inspection at Slaughter Plants: How to Get Better Results for the Inspection Dollar, (CED-81-118).**

The Department of Agriculture's Food Safety and Inspection Service inspects meat and poultry slaughter plants to see that they are sanitary and that they produce wholesome, unadulterated products. The GAO made surprise visits to 62 randomly selected plants in six states to test the effectiveness of the inspection program. Service supervisors accompanying the GAO rated 26 percent of the 62 plants--27 percent of the meat plants and 24 percent of the poultry plants—as unacceptable in one or more of six basic program requirements and noted dangerous deficiencies not severe enough to warrant unacceptable ratings. The GAO makes several recommendations to strengthen enforcement of inspection program requirements, assure that plant managers carry out their responsibility to operate and maintain sanitary plants, and help ensure the most efficient use of federal inspection resources.

**Comptroller General, USGAO (1979). Report to the Congress: Federal Export Grain Inspection and Weighing Programs: Improvements Can Make Them More Effective and Less Costly-, (CED-80-15).**

Since the Grain Standards Act of 1976 was passed, some improvements have been made in export grain inspection and weighing operations but more are needed. Some grain standards and inspection procedures are too lenient or simply inadequate and inspection certificates do not always fully disclose insect infestation, low quality grain, or foreign material in grain shipments. The effectiveness of the new weight supervision program has been limited by the lack of adequate instructions and supervision and a lack of proper training and high turnover of weighing personnel. Also, improved efficiencies in staffing and program operations could reduce inspection and weighing costs. The Department of Agriculture should further improve inspection and weighing program procedures and ensure that personnel are properly trained and supervised. To reduce weighing costs, the Congress should amend the Grain Standards Act, revising the requirements that all grain transferred into an export elevator be officially weighed.

Comptroller. General, USGAO (1978). Report no' the Congress: Workplace Inspection Program Weak in Detecting and Correcting Serious Hazards. (HRD78-34).

The Department of Labor and the states have made over 1 million workplace inspections to identify hazards. However, some which could cause death or serious injury have been overlooked or not cited. Follow-up inspections to ensure corrections often have been untimely and sometimes not made. Employers' request for more time to eliminate hazards were routinely approved without adequate evaluation. The Department of Labor needs to better direct and evaluate Federal and State inspection programs.

Danaceau, 2. (1982). Developing Successful Enforcement Programs, in E. Bardach and R. A. Kagan, (eds.), Social Regulation: Strategies for Reform. San Francisco: Institute for Contemporary Studies, pp. 139-158.

This chapter analyses on-site inspection programs and the variations in regulatory policies and procedures related to standards, procedures, violations, citations, and fines. The author addresses the adversarial relationship between the inspector and industry within OSHA and the OSM and points to the USDA meat inspection program as a successful alternative model.

Day, P. and R. Klein (1987). The Regulation of Nursing Homes: A Comparative Perspective. The Milbank Quarterly, 65(3):303-347.

This report compares skilled nursing home facility inspection programs in two U.S. states with the British program. It describes differences in philosophy, enforcement models and features of the inspection process. Although there are marked disparities in agency orientations and requirements, the actual processes of inspection show a remarkable amount of similarity. The authors propose that the "professional culture" of nursing home surveyors overrides the formalized intentions of the agency. The survey of patient conditions and environment is done intuitively, and therefore, instruments to measure performance may be inappropriate.

Diver, C. S. (1980). A Theory of Regulatory Enforcement. Public Policy, 28(3):257-299.

Contemporary critics of regulation have focused primarily on the policymaking phase of the regulatory process, to the comparative neglect of the equally important enforcement

function. The twin norms of due process and allocative efficiency that animate most current theories of regulatory failure provide an incomplete foundation for a theory of regulatory enforcement. Viewed from the top of the agency looking down, enforcement policy consists of behavioral adjustments to the value indeterminacies and goal ambiguities that impede the application of a rationalist paradigm. Viewed from the bottom of the agency looking up, enforcement is a process of sequential screening operations driven by the necessity to “produce” violations. That process imposes its own inherent discipline on the agency’s performance. Combining the two perspectives enables policymakers to make more discriminating use of structural, procedural, and behavioral strategies to enhance enforcement effectiveness.

Dreyer, P., J. N. Morris, and C. S. Sherwood (1987, November 18-22). *Inspection of Care: Findings from an Innovative Demonstration*. 40<sup>th</sup> Annual Scientific Meeting, American Gerontological Society of America.

This paper presents information concerning the efficacy of a sample-based approach to completing the mandated Inspection of Care (IOC) reviews of Medicaid-supported nursing home patients. The demonstration involved the random assignment of Massachusetts nursing homes to full and sample-review conditions—the Control and Experimental sites, respectively. The demonstration was initiated in late 1983 and continued through 1985. The primary research focus was to determine whether the proportion of facilities that were found to be deficient (based on quality-of-care and level-of-care criteria) in the Experimental sample was comparable to the proportion found in the Control sample. The findings supported such a hypothesis—i.e., the Experimental IOC intervention did not result in a lower quality of care in Massachusetts nursing homes; deficient facilities appear to be equally identifiable using the random and full sampling protocols; and the process can be completed with a considerable savings of surveyor time.

Foohy, B. J. (1981). Quality in Long-Term Care: An Analysis of Factors that Effect the Inspection Process. Master’s Thesis, Yale University School of Public Health.

To determine which factors affect survey ratings, Foohy weighted various items relevant to patient care and scored all Connecticut skilled nursing facilities. Variables analyzed included type of ownership, reimbursement rate, patient mix, presence of a union, inspector, age, education, and professional background of the administrator. For 80% of the facilities, most variation in ratings is accounted for by the individual inspectors. He recommends that in order to gain greater inspector consistency, the Department of Health Services should develop clear, quantifiable criteria to determine violations, provide inservice education, and assign inspectors by frequency of deficiencies.

Frank, N. and M. Lombness - (1988, May). Gaining Regulatory Compliance: Law Enforcement and Power in an Interactionist Perspective. Administration & Society, 20(1):71-91.

When regulatory inspectors deal with uncooperative violators who initially refuse to correct violations, inspectors must exert various kinds of power to persuade or force the violators to comply with regulatory requirements. This article draws upon interview data from a case study of food and dairy inspection in Wisconsin to identify the ways in which inspectors’ power to gain compliance is undermined by the formal policies and informal organizational culture of the agency. Because of inadequate training, pressure to

spend less time on inspections, and norms discouraging assertiveness, inspectors' power to obtain compliance through persuasion is limited. Inspectors' power and their desire to use formal enforcement mechanisms is also circumscribed. As a result, inspectors may allow violations to continue unabated because they lack the capacity to persuade or force the violator to make the needed corrections.

Frank, N. (1984, July). Assaults Against Inspectors: The Dangers in Enforcing Corporate Crime Law & Policy, 6(3):361-377.

This survey of regulatory inspectors reveals a surprising number of threats and assaults being made against inspectors in the course of enforcing regulatory provisions. Contrary to conventional images of regulatory enforcement, inspectors in some agencies face violent resistance from regulatory offenders that is similar to the violent resistance encountered by police officers. These findings provide support for the contention that regulatory enforcement and policing should be conceptualized as overlapping forms of law enforcement rather than as distinct governmental activities.

Frankel, M. (1974). The Alkali Inspectorate: The Control of Industrial Air Pollution. Social Audit, London.

This special report of a British public interest research group, Social Audit Ltd., examines the history and operation of Britain's air pollution control law, the Alkali Act. The report analyzes and critiques the Alkali Inspectorate's reliance on a compliance strategy for achieving the goals of the Alkali Act. Inspectors have great latitude in determining compliance but have limited technical or legal support.

Freund, E. (1915). The Substitution of Rule for Discretion in Public Law, American Political Science Review, 9:666-676.

This article presents one of the earliest discussions of the issue of delegation of legislative authority to administrative agencies. Freund maintained that not all government activity can be standardized and that there is a legitimate place for wisdom and judgement, and where there are hidden and imperfectly understood forces, for speculation and chance.

Frumin, E. (1988, April 19). Testimony before the United States Senate, Committee on Labor and Human Resources, Oversight of the Occupational Safety and Health Administration. Washington, DC, U.S. Government Printing Office, (86-315), pp. 108-135.

The speaker criticizes OSHA policy decisions during the Reagan Administration that reduced the number and intensity of inspections. In particular, the speaker attacks the policy of excluding employers from inspections based upon the employers' own injury data or because of consultation visits. In addition, he maintains that OSHA's policy for handling complaints, penalty assessment, and settlements unduly favor employers and exclude employees or their representatives from the processes.

Gregorio, D. J. (1978). Enforcement is the Name of the Game: An Essay on the Immigration Inspector at Work. Sociological Focus, 11(3):235-246.

This article concerns the work of immigration inspectors who determine if people merit entry according to the law. Focusing on aspects of their working environment, this paper

discusses ways inspectors have sought to organize daily activities. Faced with an uncertain decision-making process, lacking adequate preparation to deal with an unpredictable public, and working within a decentralized administrative structure, inspectors are nonetheless confronted by strong bureaucratic pressures for uniformity and consistency in their actions. Attempting to reconcile these conflicting demands, personnel have utilized various strategies for reducing overall risks associated with their work. This analysis casts doubt on the applicability of such theoretical constructs as “formal” or “informal” organizational processes when examined through an action perspective.

Cunningham, N. (1987). Negotiated Non-Compliance: A Case Study of Regulatory Failure. Law & Policy, 9(1):69-95.

This article provides a case study of the way in which an Australian regulatory agency—the New South Wales Mine Inspectorate—confronted the problem of enforcement against an asbestos mining firm whose operations had created a major health and safety hazard. The author’s research found that, in this instance, efforts to bargain for compliance through the threat of persecution were virtually nonexistent. His analysis examines the persistence of this strategy of “negotiated non-compliance” and suggests that dimensions of regulatory capture played a significant role in the actions of the Mines Inspectorate. This case also reveals the importance of the agency’s sensitivity to maintaining an equilibrium with its political environment: enforcement strategies tend to reflect bureaucratic concerns that a legitimate strategy of negotiated compliance could lead to increased attacks from industry and government. In this case, opposing constituency, such as trade unions and environmentalists, failed to create countervailing demands. The author also examines the ways in which the structure of power with respect to technological information can affect the inclination and capacity of the agency to adopt a particular enforcement strategy. In this case, the company controlled virtually all information about control technology, and the agency had little technical expertise. The author’s analysis challenges the assumption that a strategy of bargaining can be implemented and will produce positive results.

Hale, Andrew R. and A\_ Ian Glendon (1987). Individual Behavior in the Control of Danger. Elsevier, Amsterdam.

Chapter 4 of this book analyses the processes individuals use to detect hazards and compares those processes with those of quality control inspectors.

Hawkins, K. (1984). Environment and Enforcement: Regulation and the Social Definition of Pollution. New York: Oxford University Press.

This paper presents a sociological study of the enforcement behavior and strategies of water pollution control inspectors in England. The author finds that inspectors tended to be concerned with the general state of compliance, rather than with discrete acts. Discharge limits are often determined more by historical precedent than by scientific principle. Abatement and damage cost are based on intuitive assumptions, with little regard to wider social costs. Procedural reasonableness and a- problem-solving approach are favored. The length and quality of the relationship with the establishment is found to be an important determinant of inspector behavior as was the inspectors’ belief in the

efficacy of negotiation. A good trade officer is seen as one who can achieve compliance without resorting to formal law.

'Hawkins, K. (1983). *Bargain and Bluff: Compliance Strategy and Deterrence in the Enforcement of Regulation*. Law and Policy Quarterly, 5(1):35-73.

A strategy of compliance in which enforcement agents rely on negotiation is identified as a characteristic feature of water pollution control work. The strategy arises from the nature of the conduct and activities subject to regulation and from the need to maintain a continuing relationship with the regulated. In securing compliance, regulatory agents' enforcement tactics are based on assumptions about why polluters fail to comply. Bargaining is central to compliance strategy, but if a conciliatory approach fails, a more threatening posture will be taken in which a variety of mores, including bluffs about legal sanctions, may be employed. Law enforcement is treated as a matter of compliance as well as compulsion.

Hemenway, D. (1989). *A Failing Grade for Auto Inspections—And Motorists Like It That Way*. Journal of Policy Analysis and Management, 8(2):321-325.

Periodic motor vehicle inspection stations in most localities are numerous, geographically disperse, private, and hence largely outside the effective purview of state authorities. Motorists can choose their inspection station, and generally prefer quick, superficial and passing inspections. Motor vehicle inspectors, therefore, tend to be quite lax. Evidence is presented that the most lenient ones get more inspection business.

Hemenway, D. (1985). Monitoring and Compliance: The Political Economy of Inspection. Greenwich, Connecticut: JAI Press.

This book is about mandatory inspections. It compares and contrasts a large number of inspection processes from the viewpoint of the individual inspector. The aim of the book is to provide useful insights and to stimulate thought about this important aspect of regulation. The book presents a conceptual framework for thinking about inspectors and the inspection process. The emphasis is on how the inspection environment affects the inspector's behavior and performance. Many examples are provided to illustrate the suggested relationships. These examples are often historical and do not necessarily describe current regulations or inspection procedures, for both laws and policies change. This is a social science, not a policy document. The aim is not to evaluate agency performance nor to instruct managers on effective agency administration. The book does not explain how to do a good inspection, nor does it advise inspectors on proper behavior. Instead the purpose is to try to explain why inspectors seem to do a better job in some circumstances than in others.

Inspector General, USDOL, (Draft). Special Review of OSHA Enforcement Activities.

This review of the enforcement activities of OSHA's Philadelphia and New York regions was prompted by allegations that the Manhattan and Philadelphia area offices had improperly managed inspections and abatements. The review of enforcement activities in the New York and Philadelphia regions identified systemic organizational weaknesses, including weaknesses in the current design and development of automated management control reports, internal evaluation procedures, construction targeting methodologies, and unclear policy guidance on the role of penalty assessments. These

weaknesses create the potential for noncompliance with policies and procedures as well as the mismanagement and abuse of enforcement responsibilities in area offices. Specific noncompliance issues were also identified. Since these issues were primarily caused by a lack of adequate regional and area office management oversight, conclusions are limited to those two regions.

Irwin, K. and others (1989). Results of Routine Restaurant Inspections Can Predict Outbreaks of Foodborne Illness: The Seattle-King County Experience. American Journal of Public Health, 79(5):586-590.

To analyze the association between the results of routine inspections and foodborne outbreaks in restaurants, the authors conducted a matched case-control study using available data from Seattle-King County, Washington. Case restaurants were facilities with a reported foodborne outbreak between January 1, 1986 and March 31, 1987 (N=28). Two control restaurants with no reported outbreaks during this period were matched to each case restaurant on county health district and date of routine inspection (N=56). Data from the routine inspection that preceded the outbreak (for case restaurants) or the date-matched routine inspection (for control restaurants) were abstracted from computerized inspection records. Case restaurants had a significantly lower mean inspection score (83.8 on a 0 to 100 point scale) than the control restaurants (90.9). Restaurants with poor inspection scores and violations of proper temperature controls of potentially hazardous foods were, respectively, five and ten times more likely to have outbreaks than restaurants with better results. Although this study demonstrates that Seattle-King County's routine inspection form can successfully identify restaurants at increased risk of foodborne outbreaks, it also illustrated that more emphasis on regulation and education is needed to prevent outbreaks in restaurants with poor inspection results.

Jones, B. D. and others (1977). Bureaucratic response to Citizen-Initiated Contracts: Environmental Enforcement in Detroit. American Political Science Review, 71(1):148-165.

In this paper, the authors attempt to link individual citizen-initiated contact with government to the response of government. They first develop a theory of the mechanisms that are responsible for the generation of citizen-initiated contact, based on the need for services or policy that the government can provide and on the awareness of citizens that governmental action is able to ameliorate the need. Using government records, data \*is presented relevant to the testing of this theory and to examine agency response to the individual contact. Need and awareness are assumed to be related to well-being. The data indicate that the quality of response decreased with increased demand, so that those areas receiving the most service on an aggregate level received the poorest responses on an individual level.

Jones, C. A. (1982). Regulatory Enforcement and Compliance, with an Application to the Occupational Safety and Health Administration Asbestos Standard. Cambridge, Mass.: Harvard University, Economics Department. Unpublished Ph.D. Dissertation.

This dissertation examines the various government policies to control workplace, environmental, and consumer exposure to asbestos. It presents a formal model of regulatory enforcement that is sensitive to the cost of complying with health



standards. Under this model, firms with high compliance costs will contest OSHA citations. Their higher contest rate will impose additional costs on OSHA (providing documentation, testifying, etc.), which will in turn inspect less frequently. The model is tested using data from the OSHA Management Information System on asbestos inspections.

Kagan, R. A. (1984). On Regulatory Inspectorates and the Police, in K. Hawkins and J. Thomas, (eds.), Enforcin<sup>g</sup> Regulation. Boston: Kluwer Nijhoff, pp. 37-64.

The author compares regulatory enforcement to police work. Both police officers and regulatory inspectors work “in the field” away from supervision and face a common set of problems related to efficiency, effectiveness, and enforcement style. Neither group has resources adequate to ensure 100% compliance and is, therefore, subject to claims of ineffectiveness and must devise efficient means of enforcement. Both groups are called on to make discretionary judgments. Police, however, are established to protect institutions of private property while regulatory inspectors can be viewed as instruments of a policy of redistributing property, power, and privilege. Regulatory inspectors, compared to police, deal with offenses which are less obviously evil (*malum en se*) but are regulated for reasons of social utility (*malum prohibitum*). Strictly written regulations produce a need for flexible enforcement, while administrative constraints lead toward rigidity. The authors argue that a solution to this dilemma would be a move toward a “professional” inspectorate which will have the training and experience to interpret regulations to specific situations such an inspectorate would be more difficult and expensive to train and maintain and would require an increased the level of trust from all concerned.

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Kelman, S. (1984). Enforcement of Occupational Safety and Health Regulations: A Comparison of Swedish and American Practices, in K. Hawkins and J. Thomas, (eds.), Enforcing Regulation. Boston: Kluwer Nijhoff, pp. 97-119,

The author compares and contrasts the systems of occupational health and safety regulatory enforcement in the United States and Sweden. In the United States a philosophy of individualism and an adversarial social structure has contributed to the enforcement system being legalistic and rigid. Each managerial level within OSHA uses detailed policies and procedures and detailed reporting to achieve adherence to internal standards and to ensure that citations can stand up to legal challenges. In Sweden, where respect for and obedience to authority are part of the national character, the inspection system is compliance based and is much more loosely structured. Supervision is at best an insignificant part of the job of a Swedish District Chief. Based on responses to an in-depth survey of American (38) and Swedish (22) inspectors, Kelman maintains that American inspectors typically feel a sense of mission—that they are making workplaces safer, and that first instance penalties are critical to their effectiveness. Swedish inspectors adopt a more cooperative attitude toward employers.

Kalman, S. (1981). Regulating Sweden, Regulating America. Cambridge: MIT Press.

The author compares and contrasts the regulatory systems in the United States and

Sweden. This book length presentation is richer in detail than the author's later book chapter [Reiman 1984] but covers the same material. This book provides a very detailed discussion of the sociological and political differences between the United States and Sweden. In particular, the author examines the adversarial paradigm that predominates in the United States and contrasts it to the Swedish tendency to seek consensus.

Kemanis, V. (1980). A Critical Evaluation of the Federal Role in Nursing Home Quality Enforcement. University of Colorado Law Review, 51:607-640.

The author examines the federal role in nursing home regulation and enforcement and the extent to which the current federal system meets the statutory duty imposed on the Department of Health and Human Services to provide high quality nursing home care. The author explores the federal-state relationship under Medicare and Medicaid and explains how the federal aspects of the system restrict the states' options for improving quality care.

Leff, S. (1988, October 17). Corruption in the Kitchen: A Health Inspector's Inside Story. New York Times, pp. 39-45.

The author worked as a New York City health inspector from 1984 through 1987. He states that his "odyssey" at the Department of Health showed him that there was more than just a metaphorical connection between dirt and corruption. The inspection reports from Leff and his colleagues of bribes offered by restaurant owners began a city-wide inquiry that resulted in the indictment of numerous inspectors and supervisors at the Department of Health.

Lynxweiler, 3., N. Shover, and D. A. Clelland (1983, April). The Organization and Impact of Inspector Discretion in a Regulatory Bureaucracy. Social Problems, 30(4):425-436.

Recent trends in regulatory bureaucracies in the United States indicate a shift toward detailed, rigid mandates. In part, this movement represents an attempt to weave an increasingly seamless web on non-discretionary policies for field-level inspectorates. This paper examines the organization of inspection and enforcement practices in such an agency—the Federal Office of Surface Mining Reclamation and Enforcement (OSM). The creators of the enabling legislation and the agency top executives went to great lengths to circumvent inspector discretion. Questionnaire and interview data on the agency's inspector corps suggest that such efforts were only partially successful. Not only do field-level personnel employ discretionary practices, but the nature of the regulated industry structures the context of inspector discretion. We also show that patterns of inspector discretion affect the size of civil fines imposed for regulatory violators.

Marvel, M. K. (1982). Implementation and Safety Regulation: Variations in Federal and State Administration under OSHA. Administration & Society, 14(1):15-33.

The public policy Literature suggests that effective program implementation is less likely if formulation and implementation reside at different levels of government than if they are at the same level. This article provides an empirical examination of this hypothesis using the Occupational Safety and Health Act of 1970 (OSHA) as the vehicle for the analysis. The Act allows states the option of implementing its provisions. Twenty-two states operate their own programs while federal officials operate programs in the remaining 28. Comparison of enforcement activity across the two levels of implementation indicates that

federal officials have displayed significantly more implementation activity than their state counterparts. The author offers explanations of the differences in factors that affect implementation effort for the two groups of programs and the implications for future policy development.

Mastrofski, S. D., R. R. Ritti, and D. Hoffmaster (1987). Organizational Determinants of Police Discretion: The Case of Drinking-Driving. Journal of Criminal Justice, 15:387-402.

Organizational explanations of police behavior attribute to the formal administrative apparatus different degrees of influence on street-level discretion. Rational and constrained rational models emphasize the influence of formal policies and structures, whereas the loosely coupled model emphasizes the informal structure and environment. This study examined the relevance of these models to explaining four police agencies patrol officers' decisions to arrest drunk drivers. Analysis of officer questionnaire responses (N=71) to a drunk driver scenario showed that officers in the two larger, bureaucratized departments were much less likely to arrest than those in the smaller departments. In the large departments, the administrative apparatus had a distant relationship to the officers, but administrative priorities were closely coupled to officer discretion in the small agencies. Unable to employ elaborate bureaucratic forms because of their size, the small departments pursued DUI arrests to demonstrate professional worth. The larger departments, operating with fewer resources relative to demand, were preoccupied with other issues and did not find a high DUI arrest rate particularly useful for sustaining community support. They were able to rely on institutional forms that signified commitment to DUI arrests without actually constraining officers to make them.

Meidinger, E. (1987). Regulatory Culture: A Theoretical Outline. Law & Policy, 9(4):355-386.

Although recent scholarship on regulation has seen a significant increase in discussion of regulatory culture, little has been done to develop the theoretical implications of the concept. This article seeks to help focus discussions of regulatory culture by explicating the general nature of cultural analysis, relating it to traditional regulatory approaches, reviewing the sources of regulatory culture, and suggesting strategies for future research.

Meidinger, E. (1987). Regulatory Culture and Democratic Theory (Discussion Draft). Buffalo, NY: Baldy Center for Law and Social Policy.

In this paper, the author thinks through the cultural conception of regulation and its implications for democratic theory. The central questions in the inquiry arise from the premise that democracy itself is a cultural construct, and that meaningful institutional evaluations rarely can be made through a simple deductive theoretical exercise.

Meier, K. J. (1985). Regulation: Politics, Bureaucracy, and Economics. New York: St. Martin's Press.

An introduction to regulatory policy in America, this book studies seven key policy areas: banking, consumer protection, agriculture, the environment, occupations, workplace safety, and antitrust. The author develops a conceptual framework early in the book and applies it to

each of the policy areas. The author describes a two-way continuum of benefit to the regulated versus benefit to the nonregulated within which he locates regulatory programs. Programs are also presented as part of an interconnected network of governmental, industry, and other significant outside parties, which the author calls the regulatory subsystem.

Mendelson, M. (1980). A Critical Evaluation of the Federal Role in Nursing Home Quality Enforcement. University of Colorado Law Review, 51:607-640.

This article examines the federal role in nursing home regulation and enforcement and the extent to which the current federal system meets the statutory duty imposed on the Department of Health and Human Services to provide high quality nursing home care. The author explores the federal-state relationship under Medicare and Medicaid and explains how the federal aspects of the system restrict the states' options for improving quality care.

Mendelson, K. A. and D. Hapgood (1974). The Political Economy of Nursing Homes. The Annals of the American Academy of Political and Social Science, 415:95-105.

The nursing home industry receives three-quarters of its income from government. The industry earns high profits while providing poor patient care. Considerable swindling of government funds occurs. One category is "nickel-and-diming," which consists of clipping every possible dollar from government money as it passes through nursing home accounts. Another method—large scale and often within the law—involves the manipulation of ownership and mortgages: There are several causes for the failure of government to control nursing home swindles. While there is no lack of regulations, the will to enforce them is lacking. Industry lobbyists are especially influential at the state level, where the Medicaid rate is set. The Federal Government has failed to collect basic information about the industry and denies the public ready access to the reports on nursing home inspections. The industry's immunity from regulation, in large part, results from the lack of countervailing pressure from the public.

Meyers, A. R. and others (1987). Cops and Drivers: Police Discretion and the Enforcement of Maine's 1981 OUI Law. Journal of Criminal Justice, 15:361-368.

This study examined police discretionary behavior in stopping and arresting drivers suspected of drunken driving in the state of Maine (USA). A sample of 186 officers was sampled at the beginning and end of a one-year period with respect to their attitudes toward OUI (Operating Under the Influence of Alcohol) law enforcement and their discretionary behavior in regard to OUI. Significant minorities of police officers reported that they made decisions either not to apprehend (thirty-three percent) or not to arrest (forty-one percent) OUI suspects in the study year. Officers who reported discretionary decisions not to apprehend or arrest generally did so infrequently—i.e. five percent of possible apprehensions and ten percent of possible arrests. The type of police department was significantly associated with decision not to stop OUI suspects: officers in large departments reported more discretion. Officers with longer service careers, administration responsibilities, high personal priorities, and favorable opinions of the climate of OUI enforcement were less likely to arrest OUI suspects.

Miller, R. W. (1981, September). Gumshoeing the FDIC Act at the Grass Roots Level. FDA Consumer, pp. 22-25.

Foods and drugs are processed in every corner of the country, as are medical devices and radiation-producing products. Likewise, blood banks are to be found in countless communities. To keep up with the work in those many establishments, the Food and Drug Administration has 128 resident inspection posts located in all 50 states and Puerto Rico. This article tells how the investigator from one of those posts, in Salisbury, Maryland, does his job.

Nelkin, D. and K. S. Brown (1984). Workers at Risk. Chicago: University of Chicago Press.

This book presents excerpts from interviews with 70 workers about their perceptions of the risks they faced on their jobs.. Chapter 9 specifically addresses the question of workers perspective on OSHA inspections.

Nivola, P. S. (1978). Distribution of a Municipal Service: A Case Study of Housing Inspection. Journal of Politics, 40:59-81.

The author analyses the distribution of housing inspection activities in Boston and concludes that the dispensation of city services may best be understood as an autonomous bureaucratic process over which exogenous actors wield little influence. In support of this conclusion, the author cites patterns of inspection rates, delays, and citations, which he maintains can best be explained by positing a collection of administrative factors including technical difficulties, bureaucratic discretion, and problems of control within the inspectorate itself.

Occupational Safety and Health Administration (1985, July). Field Operations Manual (Change 18). Washington, DC, U.S. Department of Labor.

This manual prescribes the policies and procedures to be followed by OSHA agents in planning and conducting inspections. The FOM provides the formulae for calculating penalties and direction for the completion of forms by the inspector and managers. Recent revisions emphasize the consultative aspects of the inspector's job.

Office of Technology Assessment (1985). Preventing Illness and Injury in the Workplace. Washington, DC, U.S. Congress, (OTA-H-256).

In this report, the OTA examines three main topics: identification of occupational hazards, including the available data on injuries and illnesses; development of control technology for reducing or eliminating workplace hazards; and the incentives and imperatives that influence decisions to control hazards. Numerous tables of OSHA compliance statistics are presented in the Appendices.

Olson, K. (1983). Analysis of the U.S. Department of Agriculture's Continuous Inspection Program. Food, Drug, Cosmetic Law Journal, 38:393-416.

This article reviews the operation of the continuous food inspection programs instituted by the USDA to protect consumers by ensuring that meat and poultry products offered for sale are wholesome, unadulterated, and truthfully labeled. The cost of inspection, borne by the United States Government, rose to \$334 million in 1984. Because of the significant cost of continuous inspection, the USDA has experimented with patrol inspections (one inspector responsible for 3-6 plants) and quality control based programs. Both systems offer more efficient use of inspector time. Under the quality control system, actual inspection activities are conducted by the processor's employees. The author argues that the continuous inspection program needs to be made more efficient.

Pendergrass, J. (1988, April 20). Testimony before the United States Senate, Committee on Labor and Human Resources, Oversight of the Occupational Safety and Health Administration. Washington, DC, U.S. Government Printing Office (86-315), pp. 108-135.

The speaker, the Assistant Secretary of Labor for OSHA, presents an overview of OSHA's activities during his tenure. He highlights activities in setting standards and in employer assistance programs.

Pollack, E. S. and D. G. Keimig, eds. (1987). Counting Injuries and Illness in the Workplace: Proposals for a Better System. Washington, DC, National Academy Press.

Since the passage of the Occupational Safety and Health Act of 1970, there has been widespread concern that the numbers of injuries and illnesses in the workplace are grossly underreported. This report focuses on the extent to which this concern is justified and on ways of improving the national statistics on occupational injuries and illnesses. Among the study's conclusions are the findings that the BLS data systems are inadequate for providing OSHA with the data it needs for effective programming, that OSHA has not been able to use the available data effectively nor to recognize the need for data to manage its programs. The panel makes a number of specific recommendations for improving the collection and utilization of workplace injury and illness data.

Reiss, A. 3. (1984). Selecting Strategies of Social Control Over Organizational Life, K. Hawkins and J. Thomas (eds.), Enforcing Regulation, Boston: Kluwer Nijhoff, pp. 23-35.

The author explicates the differences between compliance systems of regulatory enforcement which are labeled premonitory (oriented toward preventing the occurrence of violations by attending to conditions that induce compliance) and deterrent systems, called "postmonitory" (reacting to violations that have occurred). The choice of systems is governed by general and specific conditions of organizations, and may result in a combination of the two. Compliance will be preferred when violations are difficult to detect, control technology is thought to be well understood and there is a need to provide protection from ongoing harm. Compliance is often associated with testing and licensing systems. Deterrence systems arise when the occurrence of events in time and place is unpredictable, where causes are imperfectly understood, and where the threat of long-term harm outweighs that of short-term harm. Deterrence can be weakened by exerting political pressure to reduce penalties or by the passing on of penalties to third parties. Three social trends which have altered the nature of control of wrongdoing are: extension of entitlements, growth of trust systems, and the growth of organizations and the complexity of organizational life.

Robbins, A. (1988). Bring Back the General Duty Clause. Journal of Public Health Policy, 9(3):331-334.

This brief article argues that the General Duty Clause (GDC) of the OSH Act can play an important role in achieving compliance with the Act's objective of providing safe and healthful working conditions. It increases both the discretion and responsibility of the compliance officer. The author maintains that the most important aspect of the GDC may be its emphasis on early preventive actions. The effectiveness of the GDC would be enhanced by loosening the restrictions on what may be considered a recognized hazard.

Rosenkrantz, B. G. (1972). Public Health in the State: Chancing Views in Massachusetts, 1842-1936. Harvard University Press: Cambridge, Mass.

The author traces the development of the Massachusetts State Board of Health, the first state institution responsible for preventing unnecessary mortality and promoting all aspects of public health. During the period when rapid urban and industrial growth began to sweep the country, concern was expressed that this expansion threatened health and morals. During this period, when the etiology of disease was ascribed to a host of environmental and behavioral factors, the Massachusetts Board developed a comprehensive

program of investigation and advice on issues such as housing, water supplies, slaughterhouse conditions, and the use of alcohol. Later, as specific medical prophylaxis and therapy came to characterize public health policy, the State Board depended less and less upon its ability to influence individual conduct. Laboratory scientists, chemists, and physicians, who tended to describe disease in biological terms, directed public health toward science. In view of currently pressing public health problems such as drug abuse and environmental pollution, the author warns that it is as important to identify social and scientific assumptions regarding public health as it is to discover the biological etiology of disease.

Schuck, P. (1972). The Curious Case of the Indicted Meat Inspectors. Harrier's Magazine, 245:81-88.

The author depicts the indictment of Boston area USDA meat inspectors as a case of the powerful against the powerless. The inspectors, many of whom were sent to prison, were indicted for receiving "things of value" from the plant management. The acceptance of gifts, such as packages of meat, had practically been incorporated into the job of inspection in order to reduce confrontation between inspectors and the industry. Inspectors sharply distinguished the custom from accepting bribes that would influence judgement. Taking a hard line against its inspectors enabled the USDA to maintain a clean agency image; the plant officials who testified against the inspectors were granted immunity from prosecution. Ultimately, the demonstration that an inspector can be prosecuted simply on the word of the packer weakens the process of inspection. Schuck concludes that society should concern itself with those social systems in which crime makes sense to otherwise moral men; however, in the case of the meat industry, its most powerful practitioners have not been punished.

Sharp, E. B. (1982, April). Street-Level Discretion in Policing: Attitudes and Behaviors in the Deprofessionalization Syndrome. Law & Policy Quarterly, 4(2):167-189.

This article examines the consequences of a clash between police officers' expectations of street-level discretion and supervisors constraints on such discretion. Two hypothesized consequences are examined: police officer alienation from the citizenry and police officer disaffection with the department. Both attitudinal data (from a survey of police officers) and behavioral data (from direct observation of police officers on patrol) are used. The data offer some support for the hypothesis that disaffection with the department is a consequence of the discretion-constraint clash, but no support of alienation from the citizenry as a consequence. Rather, the data suggest that officers back away from discretion in situations where the public is perceived to be hostile and where supervisors reinforce that perception by active monitoring of police-citizen encounters.

Shover, N., D. A. Clelland, and J. Lynxweiler (1986). Enforcement of Negotiation: Constructing a Regulatory Bureaucracy. Albany: State University of New York Press.

This book explores the early development and implementation of the federal program for regulation of surface mining (1977-1981). The authors' analysis is guided by a typology that contrasts enforced compliance with negotiated compliance styles of regulation. They attempt to explain how and why the new Office of Surface Mining (OSM) developed rigorous enforced compliance policies and actions. In particular, the regulators' previous relations



with the mine operators caused them to believe that the new agency would be credible only if it carried out strict enforcement.

Shover, N. and others (1984). *Regional Variation in Regulatory Law Enforcement: The Surface Mining Control and Reclamation Act of 1977*, K. Hawkins and J. Thomas, (eds.), Enforcing Regulation, Boston: Kluwer Nijhoff, pp. 121-143.

The authors compare the history of the two OSM regions: Region East and Region West. Region East, which has a large number of small and unsophisticated operators, is in an area that has traditionally had weak state regulation. As a result, a very adversarial relationship has developed between inspectors and operators that has colored the entire inspection process. In Region West, where operators tend to be large or associated with large companies, there is a greater level of sophistication and a greater willingness and ability to comply with regulation. Enforcement activities in this region are described as being less threatening to individual inspectors who are able to deal with other professionals who are of similar backgrounds and beliefs.

Silbey, S. S. (1984). *The Consequences of Responsive Regulation*, K. Hawkins and J. Thomas (eds.), Enforcing Regulation, Boston: Kluwer Nijhoff, pp. 145-167.

The author examines the reasons why the public regulation of business for the common good has “never worked out like it should.” She relates the “failure” to the responsiveness of regulatory agencies to their public constituencies—competing demands produce responses that are not all in the same direction. The chapter focuses on a single aspect of one agency—the Massachusetts Consumer Protection Agency’s policy of case-by-case mediation of consumer complaints. That policy limited action to complaints actually received by the agencies. These cases were handled on an individual basis (responsive regulation), thus reducing law enforcement to a circumstantial and private relationship between the negotiating parties with the public excluded. Responsive regulation, it is argued, fails to make law general, incorporates business interests into law enforcement, and allows business to respond to complaints individually. It silences complaining victims but fails to change practices and uses up all available resources.

Smith, R. S. (1986, October). *Greasing the Squeaky Wheel: The Relative Productivity of OSHA Complaint Inspections*, Industrial and Labor Relations Review, 40(1):35-47.

This paper questions the validity of allegations by the General Accounting Office (Comptroller General 1978) that OSHA was then allocating more of its resources to investigating worker complaints than the quality of those complaints warranted. Specifically, the author finds that complaint-initiated inspections and “general schedule” inspections (those made on the basis of targeting criteria developed by OSHA) were similarly productive in uncovering safety violations in 1977-79. The findings also suggest that the inter-industry distribution of complaints closely matched the distribution of general schedule inspections; complaints were not used by unionized workers as a weapon in negotiations; and the 1980 changes in complaint handling that were enacted in response to the GAO’s report did not improve the “yield” of complaint-initiated inspections relative to that of general schedule inspections.

Spitzer, K. A. and E. Heidinger. (1988, April 18). *The Dynamics of Environmental Inspection and Enforcement*. Buffalo NY: The Baldy Center for Law and Social Policy.

This research proposal addresses the problem of understanding why regulatory agencies and regulated firms behave 'as they do'. Section I contains an excellent review of the literature on deterrence and compliance theory.

Stearns, L. R. (1979). Fact and Fiction of a Model Enforcement Bureaucracy: The Labour Inspectorate of Sweden. British Journal of Law and Society, 6:1-23.

This article analyses the Swedish model of cooperative safety and health regulation as it existed prior to the enactment of the 1978 Swedish Safety Law. He finds that the reality did not always match the image of full and equal cooperation between industry and labor. In particular, the author demonstrates that the intensity of inspection activity correlated strongly with the changes in the business cycle. Resource allocation within the Inspectorate reflected a desire to avoid those areas of potential conflict. The author concludes that co-operation seems directed more toward maintaining the economic status quo than toward social change.

Thompson, F. J. and M. J. Scicchitano (1985). State Enforcement of Federal Regulatory Policy: The Lessons of OSHA. Policy Study Journal, 13:591-599.

This paper examines the intensity of enforcement effort in State and Federal OSHA programs. It seeks to determine whether states achieve higher or lower levels of enforcement vigor than the Federal Government and whether an incoming president is able to alter enforcement where states take part in the implementation process. The authors compare the number of compliance officers, inspections, citations, and serious citations per 100,000 workers in states having their own OSHA enforcement with those of the federal program for FY 1977-1983. Although there was a significant variation among the states, state enforcement vigor exceeded that of the federal OSHA during both the Carter and Reagan years. These data challenge the view that state enforcement of federal regulation will lag behind federal efforts, and point to a tension between Washington's desire to ease regulatory pressures on the private sector and to enlarge state discretion in the implementation process.

Thompson, S. R., D. M. Speaker, and S. Cohen (1978). Evaluation of Inspection and Enforcement Programs of Other Regulatory, Safety, and Professional Organizations-Phase I, Volume 2, Teknekron Inc., U.S. Department of Commerce, National Technical Information Service.

This volume presents the information developed in the initial surveys of the inspection and enforcement programs of 20 agencies. The information provided by each agency is given in a fixed format, covering: (1) mission and scope, (2) organization, (3) inspection procedures, (4) enforcement technique, and (5) program management. Each program description is prefaced by a brief summary description.

Tye, L. S. (1978). Looking But Not Seeing: The Federal Nuclear Power Plant Inspection Program. Union of Concerned Scientists, Cambridge, Mass.

This report focuses on one of the basic NRC regulatory functions, the agency's program for inspecting U.S. nuclear power stations to determine compliance with NRC rules and regulations. The author explores a number of issues concerning how Federal safety inspectors review the design, construction and operation of nuclear reactors. In preparing the report, an extensive review of voluminous and previously undisclosed records

compiled by the NRC and AEC was undertaken. Government files, obtained through the Freedom of information Act, included Federal reactor inspection reports, internal commentaries and critiques of various phases of government inspection programs, correspondence among NRC officials, and reviews of AEC/NRC inspection programs undertaken by other government agencies. The author maintains that the agency functions largely as nuclear industry advocates rather than as objective regulators.

U.S. Food and Drug Administration (FDA) (1982). Commonwealth of Massachusetts Retail Food Service Establishment Sanitation Program Evaluation.

This evaluation was based on the results of establishment inspections and interviews with program administrators in ten cities. The report concludes that the Massachusetts program, which is decentralized, scored unacceptably low. Inspection reports reflected higher levels of sanitation than were observed in the evaluation, which found that over half of establishments contained serious violations. The report recommends that the Massachusetts Division of Food and Drugs assume a more active role in raising standards and promoting uniformity of interpretation and enforcement of regulations through formal training programs, a centralized reporting system, and quality assurance audits.

Uviller, H. R. (1988, February). Cops and Robbers. Columbia, pp. 16-20.

In 1984, Columbia law professor H. Richard Uviller took a sabbatical to patrol the Lower East Side of New York with an experimental unit known as Nine RIP, the Ninth Precinct Robbery Identification Program, whose routine—investigating robberies—he recounts. Uviller explores the sometime discrepancy between the law's ideal and its practice in the streets: when cops must decide if the victim is telling the truth.

Veljanovski, C. G. (1983). Regulatory Enforcement: An Economic Study of the British Factory Inspectorate. Law & Policy Quarterly, 5(1):75-96.

The British Factory Inspectorate is the body responsible for enforcing occupational health and safety legislation in the manufacturing industries. The concept of economic efficiency is used to link the compartmentalized disciplines involved in regulation. This study views enforcement practices in social regulation as attempting to minimize social costs of disobeying regulations subject to institutional, political, and budgetary constraints.

Viscusi, W. K. (1986). The Structure and Enforcement of Job Safety Regulation. Law & Contemporary Problems, 49(4):127-159.

This article explores how OSHA policies have evolved as well as whether these changes are desirable. Section II focuses on issues of standards designs, and Sections III and IV focus on the efficacy of the enforcement process. The fundamental issue discussed in those sections is whether or not OSHA is now more effective in promoting safety than it was at the time of its creation. Section V provides an overall assessment on OSHA's performance and suggestions for further reforms in the agency's operation.

Vladeck, B. C. (1980). Unloving Care: The Nursing Home Tragedy. Basic Books, Inc., New York.

This book analyzes nursing home policy from 1935 to 1980. It argues that nursing home

policy is colored more by attitudes toward welfare than by attitudes toward the elderly. This begrudging attitude has been aggravated by the short-term perspective of politicians and high-level administrators, and by the private self-interest of constituents. While some improvements in enforcement and administration are recently underway, nursing home policy has been misdirected and haphazard. The nursing home industry has held the upper hand against weak enforcement hampered by vague regulatory standards and limited choice of sanctions. The Federal Government, while more distant from industry influence than state administrations, has been unwilling to aggressively regulate institutional long-term care.

Weeks, J. L. (1986). Trends in Fatality Rates in Bituminous Coal Mines, 1970-1985. American Journal of Public Health, 76(9):1151-1152.

This letter updates the data presented in 'Weeks (1983). Data are presented indicating that progress in reducing the risk of fatal injury in underground mining has slowed or stopped. The author maintains that the allocation of enforcement personnel decreased during this period as the number of assistance visits increased, and argues that progress in reducing fatality rates has declined because of this change.

Weeks, J. L. and M. L. Jordan (1985). Chronic Hazards and Acute Enforcement: Dilemma for Occupational Health Enforcement Policy. Milbank Quarterly, 63(1):127-140.

This paper is prompted by a legal decision, Secretary of Labor v. Cement Division, National Gypsum Co. (3 FHSR 822, 1981), raising the question of how occupational health standards are to be enforced in order to prevent chronic disease. The Federal Mine Safety and Health Review Commission held that a violation would significantly and substantially contribute to a hazard only if, based on the particular facts surrounding that violation, there was a reasonable likelihood that an injury or illness of a serious nature would result. This decision rejected a policy of determining all violations not of a purely technical or bookkeeping nature to be significant and substantial. The court also places the responsibility on inspectors by saying that their independent judgement is an important element in making significant and substantial findings and should not be circumvented. Risk of chronic disease is cumulative, but risk of accidental injury is not—each exposure is independent. To reduce risk analysis for occupational disease to the facts of a single violation ignores these differences and is inconsistent with the essential nature of chronic occupational disease such as coal workers' pneumoconiosis. The authors maintain that delegating enforcement policy to this judgement by a single inspector will not achieve the intended results of the Mine Safety and Health Act.

Weeks, J. L. and M. Fox (1983). Fatality Rates and Regulatory Policies in Bituminous Coal Milling, United States, 1959-1981. American Journal of Public Health, 71(11):1278-1280.

In the eleven years prior to the passage of the Federal Coal Mine Safety Act of 1969, fatality rates changed little for underground miners and were increasing for surface miners. Following implementation of the 1969 Act, both rates decreased. Beginning in 1979, and continuing into the first six months of 1982, both rates increased. These associations suggest that current relaxation of regulations and policies for coal mine safety are unwarranted.

Weil, D. (1988). Government and Labor at the Mime Face: The United Mine Workers and the Implementation of the Mine Safety and Health Act. (Draft).

Enforcement of federal safety and health regulations in U.S. coal mines relies upon the presence of labor unions, particularly among the nation's smallest (and most hazardous) mines. This study demonstrates that the safety and health activities of the United Mine Workers of America dramatically increase the level of government inspection activity, decrease miners' exposure to conditions that violate safety and health standards, and increase penalties paid by mine operators for violating those standards. Taken together, the article provides a picture of the interplay of public and private labor market institutions to improve conditions at one of the most hazardous workplaces, the mine face.

Weil, D. (1987, October). labor Unions and the Implementation of Federal Health and Safety Policy. (Draft).

This study examines the role of unions in implementing the Occupational Safety and Health Act (OSHA) by using a new set of data that provides information on the innut side of safety and health regulation enforcement. The results demonstrate that unionized establishments are more likely to receive safety and health inspections, face greater scrutiny in the course of those inspections, and pay higher penalties for violating health and safety standards than comparable non-union establishments. As a result of these impacts, the study concludes that the presence of a union is essential for the complete implementation of the country's main safety and health law.

Whiting, B. (1980). OSHA's Enforcement Policy. *Lehojasu* 31(5) :259-272.

The author, at the time Deputy Assistant Secretary of Labor for Occupational Safety and Health, outlined the agency's enforcement policy under the Carter Administration. Responding to early criticism of the agency, the author maintained that OSHA was at that time following a commonsense policy. Training, inspection, and targeting methods are described. Statistical and economic data are cited to support the author's contention that OSHA regulation was both effective and economically feasible.

Willemain, T. R. (1983). Survey-based Indices for Nursing Home Quality Incentive Reimbursement. Health Care Financing Review, 4(3):83-90.

Incentive payments are a theoretically appealing complement to nursing home quality assurance systems that rely on regulatory enforcement. However, the practical aspects of designing incentive programs are not yet well understood. After reviewing the rationale for incentive approaches and recent state and federal initiatives, the article considers a basic program design issue: creating an index of nursing home quality. It focuses on indices constructed from licensure and certification survey results because state initiatives have relied heavily on these readily accessible data. It also suggests a procedure for creating a survey-based index and discusses a sampling of implementation issues.

Williams, L. (1988). Testimony, United States Senate, Committee on Labor and Human Resources, Oversight of the Occupational Safety and Health Administration. Washington, DC, U.S. Government Printing Office, (86-315), pp. 9-50.

The speaker presents the views of the AFL-CIO on the recent history of the implementation of the OSH Act. He maintains that the thrust of the law was changed under the Reagan

Administration through administrative directive. He points to policies that eliminated many workplaces from routine inspections and responded to fewer workers' complaints. He notes that inspection frequency and intensity have decreased. He also maintains that construction inspections are improperly defined and counted in order to increase the apparent level of compliance activity. The speaker recommends worker participation on health and safety committees and stronger enforcement power for the agency as ways of improving worker protection.

Yeager, P. C. (1987). Structural Bias in Regulatory Law Enforcement: The Case of the U.S. Environmental Protection Agency. Social Problems, 34(4): 330-344.

In this paper, the author demonstrates the utility and importance of merging two distinct yet related lines of inquiry about illegal business activity. One tradition has sought to isolate the organizational and/or financial characteristics that may lead to such behavior on the part of firms. The other has investigated the political economic relations that influence legislation and enforcement efforts directed at business behavior. Using data on the Environmental Protection Agency's enforcement of the Federal Water Pollution Control Act, the author analyzes a structural model that links firm and regulatory characteristics to determine whether systematic biases operate in regulatory law enforcement. The results suggest that ostensibly neutral legal structures necessarily tend to favor more powerful businesses and to burden smaller companies disproportionately. Smaller firms appear more frequently on official lists of violators, indicating that regulatory law reflects and reproduces systemic inequalities.

Young, J. H. (1987). From Oysters to After-Dinner Mints: The Role of the Early Food and Drug Inspector. The Journal of the History of Medicine and Allied Sciences, 42:30-53.

Under the first administrator of the Federal Food and Drug Law passed in 1906, Harvey Wiley, the role of the first cadre of food and drug inspectors was created "almost casually." The new inspectors were trained in one week; they covered a broad field and carried out a "laissez-faire" sampling policy. However, the inspectors were a dedicated and ingenious group, forsaking the status of "mere sample grabber" to emulate Sherlock Holmes. In time they became the dominant figures of enforcement, gathering and developing evidence of violations that laboratory scientists then confirmed. By 1920, stronger state laws were in place and much of industry had voluntarily improved its processing behavior.

Youngstrom, R. (1979). OSHA Revisited (1975-1978). Unpublished Paper.[Harvard University School of Public Health].

This paper discusses factors that influence and control inspectors and what effect those factors have on the inspection. It is a personal account, based on the author's three years as a field inspector. It discusses experiences and thought in the context of the administration of the agency as a whole.

## TOPICAL OUTLINE

### 1. THE ROLE OF THE AGENCY IN DETERMINING INSPECTION METHOD AND STYLE

#### 1.1 CULTURE: THE PARTICULAR ORIENTATION OF AN AGENCY.

Each agency has a particular view of regulation, its regulated community, and its protected group. This culture springs in part from its legislative mandate and the situations surrounding its creation and maintenance. The goals and values that are brought to the agency by its administrators and staff likewise become part of the agency culture as do the adaptive behaviors learned during its operation. Agency culture, in part, defines the manner in which the agency carries out its duties. The two most distinctive variants of enforcement agency culture are the deterrent and compliance models.

##### 1.1.1 THEORIES OF AGENCY CULTURE

BUTLER 1979 Nursing home enforcement tends to be characterized by a regulatory life-cycle: a regulatory system born out of public pressure to solve an identified social problem initially handles problems aggressively but as pressure from the regulated industry mounts and vocal public support diminishes, agency becomes “captive” to industry, behaving more as a consultant manager and less as an active regulator. Despite periods of aggressive enforcement, most licensing agencies are ineffective due to inadequate funding, inappropriate standards and cumbersome legal remedies.

MEIDINGER 1987 The author applies the concept of culture to a regulatory community whose members desire each other’s respect as they pursue their own inconsistent interests. He notes Ernst Freund’s hypothesis of agency “aging” (1915): agency decision-making tends to be predictable over time, as a consequence of accumulated experience, professionalism, detachment, and routine procedures.

SHOVER 1986 In its ideal-typical form, the enforced compliance style of regulation encompasses an overriding drive toward the rationalization of all aspects of the regulatory process. Its components include reliance on formal, precise, and specific rules; literal interpretation of rules; reliance on the advice of attorneys; the quest for uniformity; and the distrust of and an adversarial orientation toward the regulated. The negotiated compliance style of regulation uses general, flexible guidelines; the discretionary interpretation of rules; bargaining between agency and regulated industry conducted by technical experts; allowance for situational factors in rule application; and an accommodative stance toward the regulated. (p.11)

YOUNGSTROM 1979 The changes that took place in OSHA in the late 1970’s seem to be an example of “bureaucratic rigor mortis” that eventually afflicts all new government agencies. In the face of criticism and business efforts OSHA takes a defensive posture,

30

establishes a rigid structure and defines boundaries that cause personnel to answer to the next level rather than original societal goals.

### 1.1.2 LEGISLATIVE MANDATE

BARDACH & KAGAN 1982. The authors critique “new-style” protective regulation of the 1960’s and 70’s which is concerned about inspector “capture”, and, therefore, prescribes a legalistic enforcement style. The various review mechanisms established by law as well as the tendencies of legislative oversight committees are to evaluate agencies in terms of their enforcement record, as opposed to informal problem-solving. This, in turn, bureaucratizes the inspection process as inspectors are increasingly bound to detailed forms and checklists. (pp.73-4)

BUTLER 1979 Despite recognized doctrine of prosecutorial discretion, a nursing home certifying agency may be required by law to take action against facilities not meeting certification conditions. Medicaid/medicare standards require an agency to document evidence of “good faith” compliance efforts.

DIVER 1980 Regulatory legislation rarely defines how implementing agencies should strike the balance between efficiency and distributional objectives. Goal ambiguity is particularly characteristic of early economic regulatory statutes that typically used such opaque verbal formulas as “public interest, convenience, and necessity” to conceal a multitude of possible objectives.

LYNXWEILER

1983 Statutes devised

MEIDINGER 1987 Because statutes do not usually require particular solutions, much regulatory policy is made without significant reference to legislative resolutions.

VISCUSI 1986 Much of the policy-oriented debate over the safety standards concerns stringency. Critics advocating a less stringent approach note that the Occupational Safety and Health Act does not require a risk-free workplace; only that safety be promoted as far as possible.(p. 128)

WEEKS & JORDAN 1985 In passing the Mine Safety and Health Act in 1977, Congress noted with approval that the Department of the Interior Board of Mine Operations Appeals had found that only purely technical violations would be excluded from the definition of “serious and substantial”. This decision was reversed in the Board’s 1981 National Gypsum decision.(p. 135)

WILLIAMS 1988 The AFL-CIO believes that Congress intended to establish a system of inspections with mandatory penalties because they knew that voluntary compliance would not sufficiently improve workplace conditions. (p. 14)

YOUNGSTROM 1979 OSHA legislation mandating that labor representatives shall participate in inspections is a source of much industry criticism.

### 1.1.3 GOALS. AND VALUES OF THE AGENCY

COMPROLLER OSHA emphasizes that an inspection strategy that provides strong evidence to support cited violations should be proven, without seeking to assure that all serious hazards are detected.



DIVER 1980, Agencies whose mission consists of regulating business behavior by command and control may actually tend to apply these techniques and philosophy to the motivation of their own employees' behavior. (p. 213) [reference from 1.3.3.2.]

CUNNINGHAM 1987 For an agency to survive, it must adapt its aims to the political context.

HAWKINS 1983 Because regulatory agencies recognize that economic activity is responsible for the material well-being of the community, their regulatory control is characterized by "moral ambivalence." Agencies are extremely reluctant to invoke formal law, and the sanctions provided by law tend to be weak. (p. 37)

LEFF 1988 Mayor Edward Koch of New York City states that corruption is inevitable, a belief that may contribute to the Health Department's laissez-faire attitude toward the commonplace bribing of restaurant inspectors.

LYNXWEJLER 1983 The Office of Surface Mining (OSM) agency personnel desired to protect the environment, and believed that enforcement programs would deter deleterious practices.

MEIER 1985 Unlike agencies such as the FAA or EPA where agency leadership played a strong role in creating an organizational ideology, in OSHA the ideology grew out of professional norms. This ideology had a preference for engineering standards. In addition, OSHA employees mistrusted the goodwill of employers.

SCHUCK 1972 Through its indictment of its meat inspectors, the USDA displayed its instinct for political survival. The agency took a rigidly legalistic position against the gratuity system without addressing the vortex of pressures and incentives that perpetuate it. This combination of myth and practice serves to protect the agency as well as plant operators.

SHOVER 1986 The SMCRA produced an administrative organization that consisted mostly of career bureaucrats, not of rabid environmentalists. However, some top managers advocated strict autonomy from the agency's coal-producing clientele. They generated an organizational culture characterized by high morale and strong sense of purpose, that focused on strictly enforcing compliance with the law. (p. 124)

STEARNS 1977 As an arm of the executive, the Swedish Safety Inspectorate is responsible for keeping its priorities consistent with welfare policies; but as part of a governmental structure dependent for survival on continually increasing economic productivity, its actions must also be guided by business interests. Except in response to crises, its allocation of resources and cooperative methods tend to maintain the economic status quo rather than motivate social change.

VLADECK 1980 The potential for judicial review of agency action engenders caution and rigidity, as well as timidity. Ultimately, it discourages aggressive regulation.

#### 1.1.4 COMPLIANCE V. DETERRENCE STRATEGIES

BRAITHWAITE 1985 The punitive-adversarial model succumbs to an excessively rational

view of business decision making. It assumes that managers have perfect information about the economic benefits from breaking particular rules and about the probability of accidents for the violation. Instead, consciousness of remote and poorly understood safety consequences is suppressed in the immediate struggle to get on with the job. (p. 98) Persuasion, which amounts to negotiation, works only when both sides are willing to compromise, Persuasion in enforcement is acceptable in the same way that plea bargaining is in criminal justice, where it is hoped that through failure to punish some crimes, the police officer can use scarce resources to provide better protection for the public. However, such compromise must have limits. Hazards meeting the MSHA's definitions of "significant and substantial" and "imminent" must be eliminated. However, these boundaries have been blurred by the National Gypsum decision. (p. 113)

DAY & KLEIN 1987 Agency philosophy does not necessarily guide field activities. [c.f. 1.1.4] The authors found that a pure deterrence model of regulation, advocated by New York State's top agency officials, cannot be implemented due to conditions of nursing home management. The New York State agency insists that it is not the business of surveyors to advise facilities, and employs a system of outcome indicators in order to measure facility compliance. By contrast, the Virginia agency encourages a "good working relationship with the provider and qualitative comments. In both settings, however, the inspector considers the circumstances, particularly staff turnover and the care of difficult patients, and succeeds in making general remarks about patients and environment.

DIVER 1980 If unswervingly applied, regulatory commands undermine the agency's credibility, public acceptance, and political support. Therefore, at the enforcement stage, the agency can and should adjust to variations necessarily overlooked at the rule-making stage. Enforcement policy takes the form of a "shifting mosaic of institutional actions" driven by the need to dispense of individual cases and allocate resources. (p.299) One consequence of the ascription of the regulatory sanctions to the criminal model has been a powerful pressure to individualize enforcement. The outcome must be fitted not only to the offense, but also to the offender. (p.289)

FRANKEL 1974 In 1971, Britain's chief Alkali (air pollution) inspector defended his organization's reliance on persuasion. He defined its methods as educative and argued that they were more effective than punitive methods in bringing about change. (p. 5)

CUNNINGHAM 1987 The agency ideology of the Australian Mines Inspectorate, which operates to the extreme of "advice and persuasion", is a trust in socially responsible business. Industrialists are viewed as honest, law-abiding citizens who can be trusted to carry out their responsibilities voluntarily. The few "rotten apples" are usually small operators, and it may be rationalized that their misdeeds have little impact. However, Cunningham found this compliance strategy-was carried out to the exclusion of any enforcement action that would have lent the. Inspectorate credibility. Given its "obvious and serious limitations" (workers lost their health to asbestos poisoning), Cunningham concluded that the agency stance was not only a cultural tradition, but most importantly an outcome of the contemporary political climate. The government's stake in maintaining economic activity was conducive to lax enforcement policy, while "protected groups" did not provide countervailing pressure.

HEMENWAY 1985 The legal enforcement of regulations can be costly to the agency. Documentation may be difficult, court appearances are time consuming, and formal enforcement may not result in either an effective or swift improvement in conditions. While the IRS and OSHA inspectors are instructed not to bargain, it is common knowledge that they do. Furthermore, it is possible for an ideal inspector not to be a completely accurate reporter. (p. 29)

LYNXWEILER 1983 The OSM's belief that inspectees had historically operated in a lawless fashion contributes to its tough, legalistic stance. By contrast to the "old-style" regulatory agencies of the 1950's, by the mid-1960's agency emphasis on social regulation stressed proactive, nondiscretionary enforcement.

PENDERGRASS 1988 Not relying on regulations and inspections alone to provide the answer to occupational safety and health problems, OSHA has emphasized existing advisory programs and created new ones. These include voluntary protection programs, on-site consultation, and training and education.

## 1.2 AGENCY RELATIONSHIPS

Enforcement policy and procedures are not only established within a network of governmental and non-governmental relationships, but are formally and informally modified by environmental demands. A critical aspect of agency relationships is capture of the agency as a whole, or of individual agents, by the regulated group. Another, and

sometimes competing aspect, is the need for the agency to respond to the needs of all affected groups.

## 1.2.1 AGENCY RELATIONS WITH OTHER GOVERNMENTAL GROUPS

### 1.2.1.1 LEGISLATURE

CHRISTIANSON 1979 State legislatures and other state government departments will not provide consistent pressures for enforcement because the costs of enforcement are more obvious and immediate than its benefits. While state money is spent on enforcement, the improvement in quality of care accrues by small amounts over a long period of time. This benefit is difficult to measure, particularly for politicians with limited time horizons.

VLADECK 1980 The appearance of evenhandedness in policing nursing home facilities is important in the political arena, where bureaucrats are generally eager to cover their legislative flanks. No matter how much sense it may make to concentrate inspection resources on the worst offenders, it may be difficult to explain to the member of a powerful legislative committee inquiring about the apparent harassment of his constituent nursing home administrator.

YOUNG 1987 Congressional opponents of the first national food and drug law feared that the statute would loose an “army of spies” upon suffering food processors and proprietors. Pro-law spokesmen hoped that the states would bear the brunt of enforcing the federal statute to reduce the need for new federal bureaucracy.

### 1.2.1.2 HIERARCHICAL RELATIONS. WITHIN THE AGENCY

FRUMIN 1988 The OSHA Cleveland Area Office issued an “other” citation (i.e. not serious) with no penalties, against an employer for violations of recordkeeping requirements, which the employer contested. Despite a NIOSH report stating that over 90% of a sub-group of workers at that location reported at least one symptom consistent with chemical exposure, OSHA agreed to withdraw the citation over the union’s objection. The DOL’s associate regional solicitor stated that the citation was withdrawn “because of weaknesses in the case” which OSHA “feared ... might adversely affect the endorsement of its recordkeeping regulations.” He also states that “the matter was reviewed at the National Office, regional and local levels of both OSHA and the solicitors office.” (p. 14)

REISS 1984 Compliance and deterrence forms of enforcement have different methods and objectives. The principle objective of a compliance system is to secure conformity with law without necessarily detecting and penalizing violators. By contrast, the principal objective of deterrent enforcement is to secure conformity by detecting violations of law, determining who is responsible and penalizing to prevent violations in the future. (p. 24)

SHOVER 1986 The coal companies fought SMCRA. vigorously, delaying passage of the bill and winning some compromises. The ferocity of their opposition was

partially responsible for the law's detail and stringency. (p. 124) The drafters of the SMCRA inspection and enforcement provisions favored strict, nondiscretionary enforcement, believing that a significant minority of the inspection units had a history of noncompliance. (p. 74)

SILBEY 1984 Cooperative regulation protects trade because it continually uses up all available resources without eliminating deceptive practices. By compensating complaining victims, it silences complaints and thereby protects the organization of trade. (p. 165)

TYE 1978 The NRC has developed a series of optional Regulatory Guides for licensees which outline approved methods for satisfying a regulation. Licensees are free to propose alternative ways of meeting NRC criteria against which inspectors could measure conformance with regulations. Use of ambiguous language in advisory guidelines makes enforcement impossible.

VELJANOVSKI 1983 Regulatory agencies are motivated to induce compliance at the minimum cost—to regulate “efficiently” without the expense of going to court. Therefore, inspectors utilize negotiation rather than a penal or legalistic enforcement strategy. The British Factory Inspectorate officially states that “It is not our policy to prosecute for every breach of health & safety legislation that comes to our knowledge. That would be neither practical nor productive.” Rather, cases are judged by the magnitude of consequences and history of compliance.

VISCUSI 1986 A fundamental shift in the approach taken in OSHA inspections under the Reagan Administration was the effort to reduce the confrontational character displayed in OSHA policies. Rather than the policeman of the workplace, OSHA assumed the role of a consultant on workplace issues. This shift is reflected in the substantial drop in OSHA penalties. A related change was the drop in inspection outcomes contested by employers. The decline from a 21% contested rate to a 3% rate was the outcome of a policy decision to attempt to settle disagreements with the employers in order to reduce the number of contested cases. (p. 143)

INSPECTOR GENERAL 1988 In an audit of OSHA's New York and Philadelphia regions, the Department of Labor's Inspector General found “unclear agency policy regarding the role of penalty assessment; noncompliance with FOM procedures in calculating penalties; and practices during informal conferences which significantly reduce penalties for willful and repeat violation.” The Inspector General found that these conditions were caused by a variety of factors at all levels of OSHA management. Most important was the lack of a clearly stated national office policy regarding penalty assessment, weak regional office oversight of the area office penalty assessment practices, and inadequate review of penalty calculations in the area offices.

WILLIAMS 1988 The Reagan Administration ignored the thrust of the law and changed enforcement policy through administrative fiat. (p.14) Direct and indirect messages were sent to OSHA's field staff making it clear that strong enforcement actions would not be favorably received by OSHA's top management. Williams cites the national office review of penalties greater than \$10,000 and job performance criteria which resulted in negative ratings for a high rate of contests of inspections. (p.16).

YOUNGSTROM 1979 In the late 1970s, in order to improve public relations image

concerning OSHA abuses as well as to respond to industry complaints of unequal treatment, OSHA created formal supervisory positions. Each level of authority at OSHA now feels accountable to the one above and seeks to avoid criticism as well as to justify its existence. Lower levels are increasingly alienated from regional and national offices, as the directors have been insulated by levels of supervision. Inspectors have no feeling of support from management.

### 1.2.1.3 OTHER AGENCIES/STATES

BUTLER 1979 Federally funded Nursing Home Ombudsmen are usually state agencies subject to industry pressure and hence fail to sufficiently support nursing home regulators.

CHRISTIANSON 1979 A fragmented institutional framework discourages strong enforcement efforts by inspectors, e.g., the prosecutor who works for a different agency from the inspector may not necessarily act on the inspectors' recommendations.

COMMITTEE ON GOVERNMENT OPERATIONS 1984 While the EPA has responsibility for establishing pesticide tolerances, the FDA is responsible for monitoring the nation's food supply. The FDA needs to establish procedures for coordinating its pesticide monitoring activities with the regulatory programs of the EPA; in particular, it should routinely solicit from the EPA information on the nature of their residue data needs and to advise the EPA whenever it determines, on the basis of its monitoring, that pesticide residues are not being adequately regulated.

KEMANIS 1980 The fact that federal reimbursement of state costs is contingent upon use of federal standards, forms, methods, and procedures creates obstacles for states wishing to improve on the federal system by developing and implementing higher state standards or a differing assessment system. The HEW and HHS have never authorized waivers of the federal system for replacement by a state system, and have never granted requests by states for federal funding of a resident assessment system. Furthermore, states have little incentive to develop higher standards when they may participate in the federal programs at no cost. A regulation giving HHS veto power over state certification judgments would undermine the authority of state agencies, cause duplication of functions, and erode the relationship between the State and Federal Governments upon which the Medicaid program is based.

LEFF 1988 Following the well-publicized indictment of 28 former and current health department inspectors and supervisors of extortion, the city administration's Department of Investigations issued a directive to the heads of eleven agencies ordering them to substantially revise licensing and inspection regulations.

MARVEL 1982 "Federal implementors (of OSHA] have been more likely to conduct inspections, find violation, issue citations and levy fines than state implementors."

THOMPSON & SCICCHITANO 1985 "During both the Carter and Reagan years, the enforcement vigor of most states exceeded that achieved by OSHA itself." [Note: Marvel (op. cit) uses data from 1974-1978; Thompson and Scicchitano use data from 1977-1983. Authors also use different variables.]

U.S. FOOD AND DRUG ADMINISTRATION (FDA) 1982 The Massachusetts food sanitation programs are implemented locally, and, therefore, the state Division of Food and Drugs must occupy a supportive role subservient to the local boards of health. The FDA believes that nonetheless the Division must maintain statewide standards through administration of quality assurance and training programs.

YOUNG 1987 Under Commissioner Walter Campbell, the Federal Bureau of Chemistry set up an Office of State Cooperation to keep and report statistics on the help given by state and municipal food officials in applying the 1906 food and drug statute.

## 1.2.2 RELATIONS WITH NON-GOVERNMENTAL GROUPS

KAGAN 1984 Inspectors, while taught the legal rules and, in some agencies, the latest data and techniques for assessing risks, are rarely well trained in the equivalent of “police-community relations:” that is, in interpersonal relations with complainants and businessmen. (p. 59)

### 1.2.2.1 RELATIONS WITH INSPECTED GROUP/CAPTURE

BARDACH & KAGAN 1982 Agency will be responsive to industry if it trusts that regulated enterprises are largely socially responsible and, typically, more knowledgeable than regulators about the most efficient way to solve problems.

CHRISTIANSON 1979 The minimization of job conflict is an objective for supervisors as well as inspectors, and, therefore, they cannot be expected to argue for stricter enforcement on their own initiative.

COMPTROLLER GENERAL 1984 A FDA headquarters policy official stated that the current system of multi-level review of recommended seizures is extensive, but it helps the agency retain its credibility with industry.

FRANK & LOMBNESS 1988 Other inspectors also indicated that the culture of the organization further eroded the assertiveness of inspectors. There was a norm against “rocking the boat” and “making waves,” and inspectors believed that those inspectors who do make waves by being “rigorous” were likely to find themselves being ridiculed and disciplined by their superiors. Another potential reason why administrators might adopt policies that constitute a prescription for failure is that the agency has been captured by the regulated industry. If the industry presses its goals and is not similarly concerned with advancing the goals of regulation, and if the industry has been able to capture the agency through a variety of influences, then one might expect ineffective policies to be developed in a conscious effort to reduce the effectiveness of inspectors.

FRANKEL 1974 The Alkali Inspectorate believes that enforcement as such is generally unnecessary; that industry is capable of regulating itself, and that a plant that can prevent its emissions from causing a nuisance will do so without pressure. Inspections are made not to catch offenders but to determine the cause of a problem. (p. 15) If the British Alkali Inspectorate required expensive new equipment to be installed as soon as it had been developed, industry would be reluctant to carry out research. In fact, existing works are given generous grace periods before they must meet new standards. (p. 12)

FRDMIN 1988 In 1982, Assistant Secretary of Labor Thorne Auchter initiated a policy of exempting employers from inspections for one year if they request OSHA to conduct a “consultation” inspection. During such inspections, no citations are issued for violations. Also they are carried out confidentially—worker representatives do not participate, and OSHA withholds the results from workers. (p. 16) In 1982, OSHA management instituted a prohibition against multiple penalties for similar violations. Known as “Grouping”, it requires inspectors to treat similar violations as a single violation for the purpose of calculation penalties. This policy change accounts for much of the 75% drop in penalties between 1980 and 1982. (p. 21)

HAWKINS 1983 Regulatory enforcement takes place in the context of continuing relationship with “that segment of the community defined by its economic activity as subject to the rules.” This characterization of the inspectee suggests the leniency of the rules and the view of industry as a community member.

JONES 1982 OSHA will inspect firms with high compliance costs less frequently than those with lower costs. This is because firms with high compliance costs will contest OSHA citations. Their higher contest rate will impose additional costs an OSHA (providing documentation, testifying, etc.), which will, in turn, inspect less frequently.

KELMAN 1981 Administrators of American agencies often note with satisfaction that all of the conflicting interest groups dealing with the agency are unhappy at the agency’s policies, and, therefore, the agency must be “doing something right.” This is making a virtue of necessity, and is not a satisfactory response.

LEFF 1988 According to a court complaint filed by the FBI, two supervisors of restaurant inspectors controlled a scheme to extort payoffs and expected to receive half. Inspectors who refused to cooperate were assigned to remote and, therefore, less profitable areas.

VLADECK 1980 Government agencies have sought to make allies, not opponents, of such powerful groups as the fraternity of physicians. This desire first shaped the nursing home surveyor’s role as consultant to facilities, not, a cop.

#### 1.2.2.2 RELATIONS WITH PROTECTED GROUP

BUTLER 1979 To the detriment of enforcement efforts, nursing home licensing agencies are subject to constant industry pressure without counterpressure from reform interests representing the community in general and residents in particular.

STEARNS 1979 A Swedish safety delegate showed the author a letter informing him that his position did not authorize him to question a decision of the Inspectorate.

VLADECK 1980 Most of those involved in the nursing home survey process believe that the correlation between complaints and serious deficiencies is tenuous. Therefore, responding to spontaneous complaints may not be the best way to employ scarce manpower.



WILLIAMS 1988 In an attempt to resolve major enforcement cases with employers, the Department of Labor Solicitor's Office at the national level negotiated settlements with corporate officials excluding the unions from the discussions. Settlement discussions and agreements have considered not only citations already issued by the agency, but have been expanded to cover citations not yet issued by the agency. These "pre-citation" and "post-citation" settlements not only exclude the union, but also have failed to include adequate provisions to assure proper abatement. In one case, the Department of Labor, without the union's involvement, entered into a settlement agreement with Scott Paper that reduced penalties for recordkeeping citations and eliminated penalties for hundreds of safety citations that were not yet issued. (p. 20)

### 1.2.2.3 RELATIONS WITH THE COMMUNITY

BRAITHWAITE 1985 Historically, increased punitiveness toward mine safety violations has reflected increased public concern over death in the mines. This concern engenders greater efforts to persuade operators to run their mines safely, greater investment in training, and more self regulation.  
(p. 86)

BUTLER 1979 When the public is not regularly confronted with shocking problems in the nursing home industry, public support for regulatory efforts diminishes and the agency is increasingly demoralized by industry criticism. Because of community interest and concern, small, rural nursing homes often have the best reputations for providing high quality care to residents.

CHRISTIANSON 1979, The task of monitoring the enforcement process rests primarily with citizen groups, who can mobilize legislative support for reform when responding to highly visible results of ineffective enforcement. However, citizen groups cannot be expected to monitor the day-to-day regulatory process.

FRANKEL 1974 Interviews revealed that the Inspectorate takes a dim view of the public. On two occasions, inspectors replied to questions about public complaints by illustrating the frivolous or unnecessary complaints they receive, reporting residents' grumbling over "a man singing on the job", alleged oil refinery smells which turn out to be a dead dog in the cellar; or, according to the 1971 annual report, complaints about red "scorched" grass which had actually been caused by aphid infestation. The Alkali Inspectorate is accustomed to having things its own way. When the public runs out of patience with its methods or goes over its head in pursuing complaints, the Inspectorate is characteristically peeved. Complaints that the Alkali Inspectorate is not acting quickly enough, or that it has not fully disclosed information to local residents, are met with an aloof rebuttal.

KAGAN 1984 The abuse of power on the part of regulatory inspectors leads only to higher costs for regulated enterprises. Regulatory enforcement is far less pervaded by the specter of harming the innocent than in police work. By contrast, regulators are exposed to criticism primarily for being too solicitous of regulated enterprises. This is in contrast to institutional controls of policing, which try to compel concern for suspects' rights. (p. 49)

MENDELSON & HAPWOOD 1974 The Department of Health, Education, and Welfare keeps reports of nursing home inspections from the public. Withholding this information protects both the operator who runs a bad home and the inspector who allows the violations to persist\_

OLSON 1983 The production of adulterated products not only injures consumers, but also injures markets for other processors complying with good practices and safety standards, damages the USDA's integrity as a governmental institution, and results in costs to all.

SHOVER 1986 In Region East, there was considerable indigenous citizen opposition to the excesses of surface coal mining. Much mining was done close to homes and had harmed many citizens. In addition, grass roots movements openly expressed concern over the perceived venality and power, lessness of state regulatory authorities. (p. 102) Citizens' and environmentalist groups pushed for regulations under SMCRA which would leave little discretion to coal operators or to the regulatory authority. One provision of the proposed interim regulations which reflects this influence provided that any person who "suspects or knows" of a violation of the act or the regulations could request an inspection by the OSM and some type of enforcement action. It guaranteed the citizen confidentiality unless electing to accompany the inspector, a right provided in the regulation. When published in 1979, the permanent regulations were essentially unchanged from these proposed regulations. (p. 65)

U.S. FOOD AND 116P9 ADMINISTRATION (FDA) 1982 The FDA recommends that a series of programs be developed at the state and local sanitation program levels to increase the awareness of the general public of the importance of the food service sanitation program.

VLADECK 1980 Agencies inspecting nursing homes may deny public access to inspection findings because health professionals assume the ignorance and incapacity of the general public. Agencies were also afraid of scandals; they knew they were countenancing the existence of many seriously deficient facilities. As the number of substandard facilities has declined, agencies have been less reluctant to disclose survey findings to the public.

### 1.3 MANAGEMENT

Agency managers at higher levels develop policies and procedures which will be implemented at lower levels. Those managers must develop methods for determining which policies and procedures are required, for communicating the developed policies and procedures downward, and for ensuring that implementation accurately reflects established policies and procedures. Higher levels may tightly control the activities of lower levels, or may allow for leeway. Significant areas to which higher managers must attend are the selection of inspection targets and the scheduling of inspections, penalty assessments, dispute resolution, and the clarification of agency policy. Controlling the quality and intensity of sub-unit and agent performance requires the development and use of recordkeeping, auditing and evaluation procedures. In addition, managers must select inspectors from an available pool and then train, motivate, assign and evaluate

those selected to accomplish the agencies goals and objectives.

### 1.3.1 MANAGEMENT OF AGENCY FIELD OPERATIONS

U.S. FOOD AND DRUG ADMINISTRATION (FDA) 1982 The FDA recommends that the Massachusetts Division of Food and Drugs develop and implement a statewide mandatory manager training and certification program, to be fashioned after the National Institute for the Food Service Industry program (NIFI).

#### 1.3.1.1 GUIDANCE FROM HIGHER LEVELS TO LOWER

COMPTROLLER GENERAL 1978 Hazards would be detected and reported more often if OSHA and state agencies provided inspectors with information on serious hazards by industry and if field offices were issued instructions requiring them to evaluate inspectors' performance and giving them such procedures. Modifications or withdrawals of citations in the area offices generally were not reviewed at higher management levels such as the regional administration.

DIVER 1980 A top-down enforcement policy is a set of rules that grows increasingly specific as one descends the hierarchical ladder, for allocating resources among, and specifying the content of, various surveillance and prosecutorial tasks. (p. 261) Agencies, often deliberately, leave considerable slack in official enforcement policy, which is taken up by those at the lowest levels of the formal organizational structure. (p. 291)

INSPECTOR GENERAL 1988 In reviewing the New York and Philadelphia area offices' practice of penalty assessment, the Inspector General found that the national office had not provided clear direction to field offices regarding penalty assessment and abatement and had not clearly identified the responsibilities of each level to achieve both goals.

MASSACHUSETTS STATE AUDITOR'S REPORT 1988 Because of the expansion of the food service industry and the mobility of today's consuming public, the issue of restaurant sanitation has broadened from that of a purely local concern. The Department of Public Health, therefore, needs to have the level of oversight necessary to enforce the State Sanitary Code.

WILLIAMS 1988 Although the Hazard Communication Standard was due to go into effect in non-manufacturing industries in May, 1988, OSHA had not yet issued a directive to the field to prepare for enforcement in those industries as of April of that year. (p. 19)

#### 1.3.1.2 LOWER LEVELS INPUT INTO HIGHER LEVEL POLICY FORMATION

INSPECTOR GENERAL 1988 - The IMIS was designed largely by the national office staff without sufficient area office input. As a result, the system is most effective in gathering data for national office usage and least effective in providing reports and data for area office usage. (p. 16)

LEFF 1988, It was frustrating for New York City health inspectors to bring up problems and

to receive no response from management, such as to their suggestion to institute a policy of immediate reaction to bribe offers. Following the well-publicized extortion charges brought against Health Department inspectors and supervisors, the New York City Department of Investigations told agencies to rotate assignments for both inspectors and supervisors, to conduct more stringent reinspections, and checks on supervisors.

#### 1.3.1.3 EFFECTIVENESS OF AUDITS

COMPTROLLER GENERAL 1985 The Department of Labor program, managers indicated that audits, reviews, and evaluations are not always useful to them and program evaluation activities have declined. (p. 106)

MASSACHUSETTS STATE AUDITOR'S REPORT 1988 Because of the DPH's limited resources and the comprehensiveness of its evaluations, only 13 of 351 municipal food establishment sanitation programs were audited between July 1, 1983 and June 30, 1987. This limited number of local audits does not provide the Department the level of oversight necessary to adequately monitor local boards of health. The state auditors recommend that the DPH should continue its thorough reviews, but, in addition, develop and implement a more limited type of review that would enable the DPH to increase the number of local programs that it annually audits. Not only would the DPH then be able to assist more cities and towns, but it could verify the accuracy of information contained in the annual reports of local boards of health. The auditors also recommend that the DPH ascertain more specifically the strength and weaknesses of the local programs, and identify the staffing, training, and organizational needs of the programs; these results and recommendations should then be shared with town and city officials.

#### 1.3.2 INSPECTION MANAGEMENT

##### 1.3.2.1 SITE

##### SELECTION/PRIORITIZATION/SCHEDULING/NOTIFICATION

BARDACH & KAGAN 1982 Statutory directives to inspect fully and periodically all facilities are inefficient. Rather, inspection should be concentrated where it can prevent the greatest harm to the greatest number, and to gain reliable information about distribution of hazards. However, the two are usually opposed, so prioritization involves a trade-off. (p. 165)

DIVER 1980 Regulatory success is often less visible than regulatory failures. Aversion of risk would induce regulators to concentrate their enforcement activities where they perceive the largest risk of visible harm. The risk aversion thesis helps to explain the high priority that regulators assign to complaints from the public. Whatever the odds of actually finding a violation, failure to respond to a tip exposes the agency to criticism. (p. 275)

HEMENWAY 1985 Many agencies announce their priorities when complete compliance with the regulations is not expected. The firm then is more apt to satisfy requirements emphasized by the agency. As the surveyor focuses on the emphasized items, he may discover only a small percentage of the total violations. But the agency may be

better able to fulfill its actual mission. In Massachusetts, nursing home surveyors rate each facility on 627 items but does not consider all 627 items to be of equal importance. The surveyor checklist is available to providers and so are the agency weightings for each item. (p. 23)

INSPECTOR GENERAL 1988 The audit of the New York and Philadelphia area offices revealed that targeting practices did not ensure that construction establishments were neutrally inspected and that FOM procedures were followed in developing manufacturing establishment lists. (p. 33) Inspections frequently were untimely or otherwise improperly administered.

KELMAN 1984 The Swedish enforcement process contrasts markedly with OSHA's. Routines for conducting inspections are set out in less detail. Although the inspection processes are similar in the two countries, in Sweden, the inspector is responsible for a specific set of workplaces which he gradually gets to know better. (p. 104)

KEMANIS 1980 Federal nursing home survey procedures imposed on the states are geared toward annual inspections rather than continuous monitoring of quality care. The fact that surveys usually occur near the end of the twelve-month certification period makes any state requirement for unannounced surveys less effective.

POLLACK & KEIMIG 1987 The NAS panel supports the principle that the BLS protect the confidentiality of the survey data it receives from individual establishments. Data collected by the BLS should not be transmitted to OSHA for enforcement purposes.

SMITH

1986 The author, refut

complaint-initiated inspections and "general schedule" inspections were similarly productive in uncovering safety violations in 1977-79. The findings suggest: (1) that the distribution of complaints closely matched the distribution of general schedule inspections; (2) complaints were not used by unionized workers as a weapon in negotiations; and (3) the 1980 changes in complaint handling enacted in response to the GAO's report did not improve the "yield" of complaint inspections relative to that of general schedule inspections (each yielded very similar rates of serious citations.) (p. 46) Although complaints directed inspectors toward large, unionized workplaces (a 1% increase in unionization leads to more than a 1% increase in complaints), no evidence linked complaints to collective bargaining disputes, or to trivial hazards. However, a strong correlation was found between complaints and serious hazards.

STEARNS 1979 Resource distribution is a key issue in the analysis of an organization. The Swedish Inspectorate had, prior to 1978, reduced the emphasis on field work and tended to avoid those areas of highest potential conflict, looking instead toward those occupations which were least crucial to the production of profit.

VISCUSI 1986 The author argues for targeting inspections at employers with the worst records. (p. 140) He believes that employer specific data should be provided by the BLS, which currently refuses to do so, rather than by obtaining it piecemeal through record check. (p. 142) He believes that the present procedure exempts too many "bad actors" from safe industries and leads to the inspection of too many good performers in risky industries. If the ultimate objective is to achieve the greatest risk reduction, the author

maintains, one should take into account performance relative to the industry since that will be an index of the potential gains that can be achieved from improvements in the workplace technology.

VLADECK 1980 Until recently, nursing home facilities were routinely given considerable advance notice of when surveyors were to come. Often this practice was rationalized on the grounds that it made the surveyors' work easier if the facilities had their records in order and staff were accessible. This practice was tied to a concept of surveyors as "consultants," not police; and at times it was a result of political pressure. Finally, there is considerable bureaucratic inertia. It is easier to run through a list rather than schedule surveys in a manner responsive to variations in facility quality.

WEIL 1987 Unions influence the probability of an employer receiving an inspection, primarily through co

WHITING 1980 It is important to stress that scheduled inspections are different from complaint inspections, not because of the inspection itself but because of the reason behind it. Scheduled inspections are part of a systematic strategy designed to establish a "presence" in an identified group of industries. Complaint inspections are responses to a worker who believes that he or she faces a hazard, regardless of whether his or her workplace is among those firms targeted for inspection.

WILLIAMS 1988 OSHA has no real system for targeting construction sites for inspections. Because the agency currently obtains no information from contractors prior to beginning work on particular operations, it cannot schedule inspections as needed. This contrasts with California's state OSHA plan that requires contractors to notify the state of major construction jobs and seek permits for particularly hazardous operations. (p. 22)

#### 1.3.2.2 PENALTY ASSESSMENT/REVIEW

BEATRICE 1981 Despite Federal and State regulations which address nursing home quality of care, many facilities provide poor or marginal quality of care because there are no credible sanctions available to police the system. Facility decertification is undesirable if carried to end points of payment denial, closure, and patient transfer; therefore, exit from the system is seldom enforced.

BUTLER 1979 Effective enforcement of licensing standards requires a variety of civil and criminal remedies less severe than nursing home closure.

DIVER 1980 From his research on the Mining Safety and Health Administration, the U.S. Coast Guard, the Federal Trade Commission and the ICC, Diver concludes that in assessing penalties a firm's history of previous violations is the most influential factor. Greater weight is attached to actual consequences of the violation than to potential consequences. The penalty actually paid is a function of how aggressively the respondent bargains with the prosecutor.

VISCUSI 1986 The financial incentives induced by OSHA are inconsequential. Penalties average fifty-seven dollars per violation and annual OSHA penalties total just over \$6 million. By contrast, higher worker wages generated by job risks are \$69 billion and worker compensation premiums are in excess of \$10 billion. OSHA enforcement efforts comprise an inconsequential addition to policies intended to

promote workplace safety. (p. 139)

VLADECK 1980 States are reluctant to revoke licenses and terminate provider agreements for nursing homes' noncompliance with standards. It is analogous to a criminal code in which execution is the only penalty; no room is left for rehabilitation. In addition, serious burdens would be imposed on nursing home residents. A perceived shortage of beds reinforces this reluctance, as well as formalities of due process required to curb the property rights of facilities.

### 1.3.2.3 QUALITY CONTROL

#### 1.3.2.3.1 RECORDKEEPING

COMPTROLLER GENERAL 1978 As of 1978, OSHA was developing a regional audit program that would centralize evaluation responsibility. The Comptroller General still contended that more data is needed to identify hazards and better documentation is needed on whether and how employers were complying with standards. OSHA Area Office logs and files generally did not contain sufficient data to determine if follow-up inspections had been carried out.

INSPECTOR GENERAL 1988 The review of the New York and Philadelphia OSHA Area Offices disclosed that 35% of violations contained either no documentation or inadequate documentation to verify that the employer had abated all violations cited.

MASSACHUSETTS STATE AUDITOR'S REPORT 1988 The state auditors recommend that the Department of Public Health amend the State Sanitary Code to require that the annual reports of local health boards sent to the DPH include information on the number of food establishment permits issued, inspections conducted, the number of food establishments with two or more critical violations, the type and number of enforcement actions taken, the number of full-time food sanitarians, and description of any problems encountered by the local board in fulfilling Sanitary Code requirements.

WILLIAMS 1988 In FY 1987, OSHA conducted nearly 35,500 inspections in the construction industry, a 35% increase since FY 1980. But OSHA's method of defining and counting construction inspections greatly inflates their enforcement activity. Instead of counting each job site visited as an inspection, the number of contractors at a site is used for inspection counting purposes. Most sites average seven to eight contractors, meaning that in reality only 4,500-5,000 construction sites were visited with only 318,000 construction workers receiving the benefit of an OSHA inspection.

#### 1.3.2.3.2 EVALUATIONS OF SUBUNIT PERFORMANCE

COMPTROLLER GENERAL 1978 A primary criticism of the report is OSHA's failure to monitor the quality of inspections through spot-checks and on-the-job evaluations. The Comptroller General recommends that the Secretary of Labor direct OSHA to establish programs to evaluate the effectiveness of inspection efforts, which would also require development of sufficient data to identify hazards and procedures for effective supervisory review. These steps should also be required of state programs.

HEMENWAY 1985 Whatever criteria are used to define good performance will affect the inspector's incentives and conduct. Focusing on the easily measurable items means less emphasis may be placed on the intangible yet possibly more important aspects of performance. Furthermore, the inspector is likely to alter his behavior when accompanied by a supervisor. OSHA found that the average number of violations cited by state inspectors quintupled when they were accompanied by federal supervisors. (p. 43) Inspectors can be monitored through reinspections, which is expensive, or by having him examine a product of known quality, such as a "test" car for motor vehicle inspectors, or known trichinosed meat for meat inspectors. Internal or external informers or complainers can also be used but may not be reliable or forthcoming. (p. 45)

INSPECTOR GENERAL 1988 The OSHA National and New York Regional standard evaluation programs did not identify vulnerabilities and deficiencies in area office operations. 'Instead of focusing on overall system operations, the programs focused almost exclusively on individual inspection records. OSHA's Internal Evaluation Program does not adequately evaluate either organizational and policy vulnerabilities or internal control weaknesses. Although designed to be performed annually by regional office staff, the New York Regional Office was only performing bi-annual evaluations.

LYNXWEILER 1983 Eastern Area mine inspector supervisors compared reports and photographs for discrepancies and conducted follow-up inspections. Statistics were posted on enforcement activities, which functioned as an informal means of self-evaluation.

WILLIAM 1988 One OSHA job performance criterion provides a negative rating for a high rate of contests of inspection results. (p. 21)

#### 1.3.2.3.3 MANAGEMENT INFORMATION SYSTEMS (MIS)

INSPECTOR GENERAL 1988 The Inspector General found that OSHA's IMIS reports currently do not constitute an effective management control system. They do not contain all essential control points and data and are not fully implemented. (p. 16) The primary reason for deficiencies in serious complaint and referral inspections was found to be the lack of an effective management tracking system to monitor complaint and referral processes. Current IMIS programs do not adequately generate management reports. (p. 39)

KELMAN 1984 OSHA has a management information system that collects large amounts of data from area offices. For each inspection, the inspector must fill out a report with detailed information. The massive input is matched by massive output. There are several units at OSHA headquarters involved in controlling the field. One unit scours Management Information System printouts looking for problems. When it finds them, it reports to the appropriate OSHA Regional Office. This unit also conducts periodic audits of area offices. (p. 104)

MASSACHUSETTS STATE AUDITOR'S REPORT 1988 Because no comprehensive reporting mechanism exists on the compliance of food establishments with the State Sanitary Code, the DPH must rely on its quality assurance audits or wait for an outbreak of foodborne illness within a community to discover that the community's sanitation



program is not enforcing the public health laws.

POLLACK & KEIMIG 1987 The NAS panel concluded that all industrial hygiene data collected during OSHA inspections as well as OSHA required industry monitoring data, should be entered into the IMIS.

U.S. FOOD AND DRUG ADMINISTRATION (FDA) 1982 The only records maintained by municipal sanitation programs are inspections done at the request of the local boards. There is 110 centralized listing of food service establishments or summary spread sheets. The FDA recommends processing of information and routine inspections by computer to provide an effective management tool, and the use of summary spread sheets to detect repeat or chronic violations. Failure to retain a detailed history of the firm places the inspector in a highly vulnerable position and makes the entire program suspect.

#### 1.3.2.3.4 USE OF STANDARD FORMS/FORMULAS, ETC.

BARDACH & KAGAN 1982 The various review mechanisms established by law as well as the tendencies of legislative oversight committees are to evaluate agencies in terms of their enforcement record, as opposed to informal problem-solving. This bureaucratizes the inspection process as inspectors are increasingly bound to detailed forms and checklists. (pp.73-4)

BODEN 1989 The basic reason for OSHA's ineffectiveness in reducing workplace injury rates is its excessive reliance on enforcement of standards. The combination of changing health and safety conditions and infrequent inspections means that OSHA can be expected to uncover only highly visible and persistent health and safety hazards.

DIVER 1980 Discretion persists despite -specific instructions and the relatively objective quality of the investigative report. It is impossible to codify every condition likely to be encountered, or for the inspector to identify and interpret what may be fleeting evidence.

HEMENWAY 1985 In Massachusetts, nursing home surveyors are required to rate each of 627 items on a scale from 0 {excellent} to 5 (terrible).

INSPECTOR GENERAL 1988 The OSHA's FOM requires that penalty assessments be adequately documented and justified. Both gravity based penalty (GBP) calculations, and penalty adjustment factors for size, good faith and history, must be fully documented to support these calculations. The FOM also provides that, once established, penalties for willful, repeat, and high/moderate serious violation shall not be reduced by good faith adjustments. The audit of the New York and Philadelphia area offices revealed: 1.36% of serious or higher violations contained GBP calculations that were either not documented or not justified; 31% of serious or higher violation contained penalty reductions for size, good faith, and history that were not in accordance with FOM procedures; 52% of the serious or higher violation had either GBP calculations and/or reductions that were either unwarranted or not in compliance with FOM procedures. (p. 44)

U.S. FOOD AND DRUG ADMINISTRATION (FDA) 1982 In Massachusetts, there is

no standardization program for inspections, reporting, equipment, or enforcement. The FDA strongly recommends promulgating a uniform set of interpretations and enforcement procedures and adopting uniform inspection scoring, reporting and recording systems, such as an itemized checklist.

#### 1.3.2.4 RESOLUTION OF PROTESTS

WEIL 1,217 Once an employer files an appeal of an OSHA citation, employees may become party to the appeal process. By participating in the administrative appeals process, unions minimize the amount by which penalties are reduced. The magnitude of this effect is small (\$2.50 per violation) and imprecise because of their large standard error in the regression.

#### 1.3.2.5 CLARIFICATION OF POLICY/REGULATIONS

COMPTROLLER GENERAL 1978 As of 1978, OSHA had not established management controls to assure that compliance officers seek out and cite serious hazards, including pre-inspection information on specific plant operations or equipment that may pose serious risks to workers. Compliance officers mistakenly believed that some hazards were not covered by standards, and they were not told otherwise. Two 1973 studies carried out by OSHA showed that one half of OSHA-9's forms recommending additional standards were for hazards already covered. However, OSHA took no action on the results. [See also 2.2.3.1.] There is considerable misunderstanding over which standards are considered advisory and which are enforceable due to the wording "should" vs. "shall," that the Comptroller General recommends ought to be clarified. A 1977 OSHA survey of eleven area offices showed that six cited hazards worded as "should" and five did not. Furthermore, many apparently serious violations are classified as non-serious by OSHA and inspectors because of inconsistent interpretations of the term "serious."

#### 1.3.3 INSPECTOR MANAGEMENT/METHODS AND CONSTRAINTS

FRANK & LOMBNESS 1988 It is possible that managerial incompetence and ignorance regarding the regulatory process contributes to policies that undermine inspectors' effectiveness in gaining regulatory compliance. Some managers have never done regulatory enforcement work and have no appreciation of the conflict resolution strategies that inspectors use to gain compliance. Thus, they are not aware of the ways in which their policies create barriers to inspectors' effectiveness. When such ignorance is coupled with an authoritarian management style and poor communication from inspectors to administrators, the impact of misguided policies is not readily communicated to agency managers. Because budget cuts prevent managers from hiring more inspectors, the workload remains constant because of the federal requirements, and the goal of compliance is deemphasized relative to the goal of getting inspections done. Quantity rather than quality becomes the criterion of success.

LEFF 1988 By the intention of the Deputy Commissioner, a new cadre of New York City public health sanitarians were trained as a unit separately from the "old guard" inspectors in 1984. Ordinarily, sanitarians were initiated piecemeal on to the job through informal apprenticeships with inspectors. The new group's training consisted of a course in sanitary practices plus phased-in instruction in particular areas. As a result, the group had a

particular camaraderie and sense of mission, was more highly motivated, better trained, and had greater integrity.

#### 1.3.3.1 SELECTION OF INSPECTORS

COMPTROLLER GENERAL 1985 According to OSHA, recruiting of engineers, industrial hygienists, economists, biologists, and chemists is difficult because private sector salaries are \$5,000 to \$7,000 higher. The MSHA has also had difficulty in recruiting mining engineers because of noncompetitive salaries.

COMPTROLLER GENERAL 1984 An FDA headquarters policy official stated that the multi-level review process of product seizures is necessary to assure consistent and equal enforcement of the Federal Food, Drug, and Cosmetic Act. Headquarters must set priorities. According to this report, adulterated foods identified by the FDA are occasionally sold before they can be seized because the FDA lacks the authority to restrict sales or distribution without an approved seizure order. Rather than pursuing the time-consuming review of every seizure action, the Comptroller General recommends that the FDA headquarters establish specific policies and criteria to guide district officials in determining when a seizure action is appropriate. A post-review of selected actions would provide headquarters with information concerning consistency, accuracy, and completeness of the districts' seizure recommendations.

HEMENWAY 1985 An effective inspector typically needs some innate intelligence, specific training, and a good personality. Level of education, often used as a screening device for intelligence, run the gamut from high school and less to Ph.D's. For many inspectors, "personality is the whole ball game." Since an inspector usually has numerous face-to-face encounters, he needs good interpersonal skills. Not only should he be honest and just, but he must also be firm and have a thick skin.

LYNXWEILER 1983 The OSM headquarter executives hired inspectors with values and biases similar to their own, chosen from contacts at other agencies, attorneys, and environmentalists. These inspectors then trained and supervised subsequent groups.

SHOVER 1986 The OSM Inspection and Enforcement Task Force sought to protect against enforcement slippage by hiring people, such as former state inspectors, already committed to the enforcement strategies of the headquarters executives. (p. 77)

#### 1.3.3.2 MOTIVATING INSPECTORS

DIVER 1980 Prosecutors 'drive the inspection process more powerfully than written guidelines as they institute and terminate enforcement proceedings. Investigative personnel naturally attempt to anticipate prosecutors' preferences in allocating their time and attention. (p. 294)

HEMENWAY 1985 The inspector's autonomy is limited by the agency's need to ensure competence, fairness and consistency. The author sees the problem with this approach being that while this may raise the performance of the least able inspectors and make examinations more uniform, the decrease in autonomy can lower morale, inhibit motivation, and decrease the good inspector's incentive to do an excellent job. OSHA industrial hygienists claim that the agency has attempted to reduce the art of inspection into a

cookbook exercise.

YOUNGSTROM 1979 By the late 1970's, management stressed inspection productivity. The promise of

### 1.3.3.3 TRAINING

BARDACH & KAGAN 1982 Consultation among regulatory officials should occur regularly to discuss hard cases, and to build up institutional memory and ability to make qualitative judgments. This method could teach "controlled discretion." (p. 159) Continuing education increases the inspector's knowledge and morale, and also reinforces their sense of participating in a larger, socially valuable enterprise. Authors suggest that inspectors become specialists in some aspect of their work and train others.

CHRISTIANSON 1979 While training programs may improve the competence of inspectors in recognizing deficiencies, they do not alter the incentives for lenient enforcement.

COMPTROLLER GENERAL 1980 Of the Labor Department managers surveyed, 51 percent believed that the training and development programs for supervisory personnel were of little or no effectiveness in improving job performance while 19 percent believed they were very effective. Forty-six percent of agency managers believed the training programs were of little or no benefit while 25 percent believed they were very effective. Responses were much more favorable among OSHA and MSHA managers.

FOOHEY 1981 Inservice education of nursing home surveyors would help assure that there is a common definition and interpretation of regulations.

KAGAN 1984 The basic task of regulation is not pacification or punishment, but the adjustment of behavior by changing incentive structures, plugging gaps in control systems, and raising the salience of harms. The professional inspector would be trained to combine the threat of legal enforcement and adverse publicity with the analysis of defects in the regulated enterprises' procedures and policies. Such professionalized inspectors would be much more expensive for governments to recruit, train, and retain, and would require greater trust from business, pro-regulation advocates, and others. (p. 60)

MASSACHUSETTS STATE AUDITOR'S REPORT 1988 The Massachusetts Department of Public Health's support and oversight of local programs should include more comprehensive training of local inspectors in criteria and techniques and implement a statewide local health inspector standardization program.

VLADECK 1980, Bureaucrats tend to be afraid of litigation and of being overruled in court. Therefore, nursing home surveyors are now routinely taught that their records must be of a quality that would pass muster in a formal trial setting.

### 1.3.3.4 MONITORING INSPECTOR PERFORMANCE

BRAITHWAITE 1985 A key argument for nondiscretionary punishment, advanced by the United Mine Workers of America, is that it takes the pressure off mediocre inspectors who can be snowed by mine managers who know more about

mining than they do. It is better to give spineless inspectors backbone through audit and peer review. (p. 141)

COMPTROLLER GENERAL 1978 It is impossible to determine how frequently compliance officers overlook serious hazards. The Comptroller General reviews OSHA's monitoring reports of state inspections, inspection case files, and reinspections to determine if prior inspections covered all hazards, showed compliance officers missed many hazards which could cause serious physical harm or death.

DIVER 1980 One effective way to counteract a tendency of inspectors to err on the side of underreporting violations is to measure their productivity by the volume of citations they issue. This measure can introduce distortions of its own, leading inspectors to concentrate on easily identifiable violations at the expense of less obvious violations. (p. 296) A common agency response to perceived inadequacies of enforcement is to issue more detailed directives to staff, coupled with more vigilant monitoring and supervision of their behavior. Most agencies use inspection report forms that require inspectors to identify activities conducted on site. However, detailed instructions and reporting requirements fail to control inspectors' interpretive and dispositional decisions because of the vast number of possible conditions, the fleeting nature of evidence, and the difficulty in detecting noncompliance. (p. 293)

HEMENWAY 1985 There are two approaches to monitoring inspector performance. One method is to require the inspector to keep records. While this may enhance accountability, it tends to decrease work satisfaction. There may be trade-offs between performance quality and job performance. The second approach is to monitor performance directly. However, inspectors will alter their behavior when they are being observed. OSHA found that the average number of violations cited by state inspectors quintupled when they were accompanied by federal supervisors. (p. 43)

KAGAN 1984 Police and inspectors both work "in the field," out of sight of their supervisors. They make decisions about the meaning of the law in direct contact with complainants and suspects and are exposed to expressions of outrage, pleas for mercy, and, on occasion, threats and offers of bribes. Supervisors may wonder if their cadres are honest, fair-minded, and whether they are working at all. Hence supervisors often subject police and inspectors to quotas of enforcement actions and to detailed reporting requirements. (p. 39)

KELMAN 1984 In Sweden, district chiefs spend their time on public relations and on doing inspections of their own. Seventy-eight percent of Swedish inspectors surveyed responded that they did not know what their supervisors' standards were (compared to 16% of American inspectors). (p. 106) By contrast, supervision of individual OSHA inspectors by their managers and of area offices by OSHA headquarters is relatively intense. No citation leaves the office without being scrutinized by the Area Director or his assistant. (p. 104) Since OSHA citations may need to be proven in court, inspectors must be scrupulous about documentation. Inspectors, in an in-depth survey reported that their supervisors' most common request was for more documentation. (p. 103)

U.S. FOOD AND DRUG ADMINISTRATION (FDA) 1282 Of the ten municipal food sanitation programs evaluated by the FDA, in only one city did supervisors evaluate inspectors' work in the field. In all cities, inspection results were reviewed by supervisors.

According to the FDA, the programs scored “unacceptably low.”

#### 1.3.3.5 ASSIGNMENT/ROTATION OF INSPECTORS

BARDACH & KAGAN 1982 The merits of territorial inspection outweigh the potential for lax enforcement because an inspector who is familiar with a plant can spot changes in routine. The higher number of citations issued by rotating inspectors may only reflect ignorance of mitigating circumstances, not their exemption from capture.

BRAITHWAITE 1985 The MSHA appoints special investigators for criminal investigations. Inevitably, gathering evidence for a criminal prosecution is a more abrasive process and more calculated to rupture rapport than routine inspection and citation. Not only does this protect the regular inspector from being viewed as the “Gestapo,” it also ensures that the demanding requirements of evidence gathering for criminal trial are handled by people with police training. (p. 155)

LYEXWEILER 1983 OSM supervisors rotate inspectors’ areas to avoid their being “captured”.

#### 1.3.3.6. INSPECTORS’ PREPARATION FOR INSPECTIONS

OSHA 1985 The FOM states that the CSHO’s most important time is spent in preparing for an inspection. Once assigned an establishment for inspection, the CSHO is required to review the types of conditions likely to be encountered, including the work processes, equipment and machinery involved, and the hazards likely to be associated with them.

## 2. ROLE OF THE INSPECTOR IN DETERMINING INSPECTION METHOD AND STYLE

Although agency policy and procedures are established at higher levels, it is the inspector who actually confronts the regulated parties. How policy is implemented at this level may be a function of the inspectors background and training, his/her personal empathies with the regulated and protected groups, the resources available and the constraints encountered, and formal and informal relationship patterns within the agency and with the regulated or protected groups.

### 2.1 PERSONAL ATTRIBUTES

The inspector comes to the agency with a personality and experience which will affect his/her performance as an inspector. Salient characteristics include educational and employment history, career goals, and the inspector’s perceptions of what the inspector role requires.

#### 2.1.1 BACKGROUND

BARDACH & KAGAN 1982 While the trend has been to hire specially educated

individuals who can master pages of technical regulations, the authors contend that such education is rarely balanced with knowledge of economics and industry production/management. Furthermore, graduates of public health schools and the like are often imbued with protectionist ideology; as a consequence, they will not allow that some risks are socially tolerable and tend not to work out balanced solutions or to elicit cooperation. (pp. 154-5) The authors believe that inspectors should also have had experience among the regulated to be able to better play the consultant role and to evaluate industry excuses for non-compliance.

DAY & KLEIN 1987 Nursing home surveyors' professional background in nursing predisposes them to utilize their expertise in nursing home assessment. Advising the home heightens their job satisfaction, and they will tend to carve out areas of autonomy in order to apply skills, thereby straying from agency objectives. Most important, experiential knowledge, rather than the imposed regulatory model, determines surveyor's method of assessing nursing home quality: as trained nurses, the surveyors quickly sum up the general atmosphere of the home and, using these signals, investigate underlying problems.

FOOHEY 1981 Nursing home surveyors vary in terms of their education and experience in nursing as well as other areas. From conversations, it is apparent to the author that not all are comfortable with the entire survey process. This may contribute to "inspector bias." (p. 35)

HAWKINS 1984 The prior training of effluent officers as chemists and technicians, not as law enforcement officials, promotes a cooperative approach. The officer is more likely to use these special skills if he solves the traders' (dischargers') treatment problem than if he merely comments on the legal status of the discharge.

LYNXWEILER 1983 Seventy-five percent of OSM inspectors held bachelor's degrees, primarily in environmental management and plant and animal sciences areas, that emphasized a conservationist or environmental protection perspective. Consequently, as a group, these inspectors espoused a strong environmental approach.

OFFICE OF TECHNOLOGY ASSESSMENT 1985 The "pro-protection" values of OSHA personnel derived from their professional training and background and their views of the agency's mission.

### 2.1.2 CAREER GOALS

HEMENWAY 1985 Inspectors have a number of career paths. One is upward progression in the inspection field. Another career path leads out of inspection into management or professional responsibilities. Although the Coast Guard has clearly defined paths for advancement, many state programs do not. This leaves industry as the principal path to advancement, thus enhancing the likelihood of inspectors' capture by industry. (p. 47)

### 2.1.3 QUALITY OF THE INSPECTOR'S JOB

### 2.1.3.1 PRESTIGE/PAN/SECURITY/ADVANCEMENT

BUTLER 1979 Lack of ability to improve nursing home quality frustrates agency personnel and leads to apathy.

HEMENWAY 1985 The typical inspector works under civil service regulations which emphasize job security. This can enhance perceived job quality and performance. It can also lower the differential payoffs for good and bad performance and lower the incentive to do a good job. (p. 47)

LEFF 1988 The job of a New York City health inspector requires intelligence, skill, tact and resourcefulness, but it pays a pittance and it is dangerous. A New York State Health Department study states that inspectors are inadequately paid, given few opportunities for advancement, and are pressed to fulfill quotas at the expense of effective results.

SCHUCK 1972 Only the work of the policeman on the beat begins to compare with the rigorous intellectual, physical, social, and psychological demands of the meat inspector's job. Meat plants are hot, noisy, and odorous, and 12-hour work days are common. Under these conditions, the inspector applies complex and technical regulations which require application of vast scientific knowledge. For all of this, the meat inspector is paid a lowly wage.

WILLIAMS 1988 OSHA has a difficult time attracting and maintaining quality staff. Starting grades for industrial hygiene and safety positions are GS-5 or GS-7 depending upon educational background. Starting pay for those grades is only \$15,118 and \$18,726, respectively, much lower than comparable jobs in the private sector. Since the agency has lost its sense of purpose and mission—the protection of worker health—there is little to attract dedicated and well-qualified people. Routinely, people who do choose to work for the agency use the opportunity to gain experience and then move on to other jobs. (p. 28)

YOUNG 1987 In 1899, the Secretary of the Massachusetts State Board of Health, Samuel. Abbott, in a lecture to the American Public Health Association, defined the difficult and complex duties of the inspector as follows: “He should keep a vigilant eye upon the markets with a view to detecting the appearance of new and unexpected forms of fraud and adulteration, and should at once report any matters to the general director. While in order to be a good collector it is not necessary that he should in any degree usurp the functions of the analyst or chemist, he should, nevertheless, possess the faculty of keen observation such as is essential to a successful detection. . . He should also be familiar with the laws relating to food and should possess the requisite knowledge and skill to make complaints at court, to examine witnesses, and prosecute cases before. . . judges.”

### 2.1.3.2 IMPORTANCE TO SOCIETY/SENSE OF MISSION/ETHICS

BARDACH & KAGAN 1982 Inspectors develop a “specialized vision, more sensitive to possible risks than. . .the average person's,” whereas industry managers juggle and rank a large number of different risks and tend to deal in probabilities. Therefore, many managers regard rules intended to prevent harms that are “merely possible” as unreasonable.

HEMENWAY 1985 The author believes that an inspector will perform better when he



thinks that the agency has laudatory goals and that he contributes to their achievements. An inspector can become frustrated if he is expected to enforce silly or unfair regulations. (p. 40) The inspector's attitude and performance improve if he becomes convinced that his contributions matter. One way he may contribute is by directly helping the inspectee, providing useful advice can also help transform an adversarial confrontation into a more relaxed, cooperative proceeding. However, enhancing the inspector's role as a consultant can cause problems, especially if he is not well trained or his actions can inappropriately bind the agency. But there is little question that acting as a consultant can often improve the inspector's morale. (p. 42) Nursing home surveyors see themselves as performing a necessary and important role in society, pointing with pride to the upgrading of nursing home care. [c.f. 1.2.2.1., 2.3.3]

LEFF 1988 The public service aspect of the New York City health inspection job makes it worthwhile: the city was very dirty, and the health inspector has the power to clean it up.

SHOVER 1986 The OSM inspector's conservationist outlook and allegiance to the goal of protecting the environment enhanced their sense of mission in the midst of Appalachia's highly charged reception to federal regulation. Inspectors felt that they were setting a precedent for environmental protection in the region.

YOUNG 1987 Written reminiscences and oral history interviews reflect the early days of federal food and drug inspection as having a great sense of elan and dedication to and pride in the agency.

### 2.1.3.3 THE INSPECTOR'S ROLE/THE "GOOD" INSPECTOR

BRAITHWAITE 1985 The competent inspector does not use command and control to achieve compliance unless absolutely necessary. He will get managers to do things by convincing them that it was their own idea to do so. (p. 103)

BUTLER 1979 Nursing home inspectors are uncertain whether they are "police" or "consultants". A lack of active public support, combined with industry criticism of regulatory efforts and the fact that their daily contacts are only with regulated facilities, makes it difficult for inspectors to see themselves as purely objective public servants. Because of this, surveyors tend to cultivate good relationships with the regulated facilities.

DAY & KLEIN 1981, Nursing home surveyors see themselves as professionals whose role it is to improve providers' practices.

HAWKINS 1984 Effluent officers tended to be concerned with correcting a state of affairs rather than punishing a single discrete activity. A good trade effluent officer was one who could achieve compliance through cooperation and who did not need to resort to the formal law. (p. 158) Prosecution indicated failure, and officers were generally inexperienced in collecting evidence.

KAGAN 1984 When applied to law enforcement, the idea of "professionalization" represents a plea for greater autonomy from outsiders who attempt to set standards for

the “profession’s” behavior. It also implies that the practitioner is granted a certain amount of discretion to use his expertise to determine what should be done in a particular situation. (p. 57)

OSHA 1985 The FOM defines the CSHO’s mission as representing OSHA to the public and carrying out the policies and procedures of the agency. It states that the most effective means of achieving this goal is to build cooperative relationships in the interest of workplace safety and health, primarily through the quality inspections reflecting the highest levels of professionalism.

ROSENKRANTZ, 1972 In Massachusetts, district health officers were first appointed in 1907 to carry out the duties of the State Board of Health. The work of health inspectors quickly increased so that even when relieved of factory inspection, their duties required the full-time attention of professionally trained personnel. Because the work of the health inspector was recognized as central to the efficient execution of public health policy, it was acknowledged that this role in preventing disease required specialized training and exclusive responsibility. An report submitted in 1915 indicated that the Board did attract young men of exceptional ability who served the state well. (pp. 136-137)

SPITZER 1988, The inspector acts as liaison between the agency and the regulated party, presenting agency’s mandate as well as interpreting and adapting regulations to particular circumstances. Consequently, they hold perspectives of standard operating procedures and cultures present in both the agencies and regulated facilities. Resulting compliance is a negotiated state of affairs between the two.

VLADECK 1980 From the time state health departments became active in the inspection of health facilities, surveyors defined their role as ‘consultants’ rather than ‘cops,’ reflecting the deference of public health professionals to private professionals—especially the fraternity of physicians.

YOUNG 1987 From the beginning, the Federal Food and Drug Administration inspectors began to forsake the status of “mere sample-grabber” and to acquire the characteristics of detectives. William Wharton received credit as the first inspector to develop evidence of law violations in factory inspections. He and others quickly fulfilled the model of how an ideal inspector would perform, in time becoming the dominant figures in enforcement. Later, as Washington headquarters developed priorities, general staff in Washington became the planning and supervising department while the field force became the line or executing department.

YOUNGSTROM 1979, As the goal of OSHA inspectors focused on turning out reports to fill in the blanks and follow procedures, a good inspector came to be defined by a good inspection report.

#### 2.1.3.4 POWER AND CONSTRAINTS OF THE INSPECTOR

APPLESON 1982 A number of states recognize a “good samaritan” liability rule under which OSHA could be sued if an injury was caused by a defective inspection.

BARDACH & KAGAN 1982 A lack of technical competence is associated with legalistic enforcement because the inspector is unable to perceive valid arguments to bend the rules. The inspector is in a position to set reasonable regulatory orders

through dialogue rather than unilateral judgement. He should give reasons for requiring regulations, so as to improve industry's understanding of collective problems. He should also be a salesman, teaching industry how compliance can advance its interests. Inspectors should "diagnose" organizational weakness that contribute to irresponsible behavior and analyze causes of violations. This style is opposed to legalistic enforcement, where the inspector "treats the regulated enterprise as a monolithic legal entity." The authors strongly advocate the consultative approach because it can make the required regulations seem more reasonable. The approach of flexible enforcement and cooperation depend not only on individual inspectors; the regulatory agency should provide the proper organizational and political environment to cultivate or permit it.

HEMENWAY 1985 The inspector can become frustrated if he believes his task is worthwhile, but he cannot accomplish it. Obstacles include the need to obtain warrants, thus destroying the surprise of inspections, the transitory nature of violations, and backlogs at supporting staff levels.

The OSHA inspector lacks enforcement power. He does not determine penalties, and he cannot close down even one phase of an operation although it may present a clear and immediate danger to life and limb. (p. 42)

KELMAN 1984 Sixty-three percent of OSHA inspectors surveyed answered that first instance sanctions were a necessary part of OSHA compliance activity. Those favoring these sanctions did so overwhelmingly because they thought there would be little compliance otherwise. (p. 109)

KEMANIS 1980 The Medicaid regulations literally provide that the Secretary of Health and Human Services has no authority to "second guess" the state surveyor's judgement as to whether a particular facility meets the federal conditions of participation. On the other hand, the HHS is not legally obligated to provide federal matching funds for a facility that was not inspected in the prescribed manner under the federal enforcement system.

ROBBINS 1988 The OSHA General Duty Clause increases both the discretion and the responsibility of the compliance officers. The demands on the inspector who chooses to cite an employer for a GDC violation are, therefore, greater. She/He must do more than quote the standard as it appears in the regulations; if contested, substantive evidence of the recognized and serious nature of the cited hazard must be presented.

SCHUCK 1972 Ironically, the meat inspector's discretion constitutes not power but impotence: he must exercise his discretion as a pawn of those interests—the processor, its employees, and the USDA—who have the greatest stake in the outcome.

SHOVER 1984 Regulatory personnel, like police officers, are not entirely free to work out idiosyncratic styles of enforcement behavior. Rather, the contexts in which they operate play an important part in their "selection" of dominant organizational enforcement styles.

WILLIAMS 1988 Unlike their mine safety colleagues, OSHA inspectors are given no immediate authority to shut down dangerous and life-threatening operations, authority given by most municipalities to sanitarians and restaurant inspectors. Instead, OSHA

must seek an injunction from the district court, an action the agency rarely takes. (p. 25)

## 2.2 INSPECTORS' RELATIONSHIPS

Each individual inspector has an ability to relate and empathize with both the protected and regulated groups. In addition, inspectors must be able to relate to higher, lower, and parallel levels within the agency. Communications and guidance from above may modify these external and internal relationships.

### 2.2.1 INSPECTORS' RELATIONS WITH THE INSPECTED/CAPTURE/INTIMIDATION

BRAITHWA/TE 1985 In coal mine safety enforcement, food and drug regulation, or pollution control, an inspector's initial commitment to punishment tends to be weakened in favor of preference for persuasion. In general, inspectors move toward a more sympathetic stance toward business. (p. 94)

DANACEAU 1982 Inspectors are the most visible actors in the enforcement 'process. They can contribute to successful and effective programs in three ways. First, by developing working styles that allow them to accommodate the concerns of the business or industry they inspect without compromising the objectives or integrity of the programs they represent. Second, by following uniform patterns that are familiar to the people being inspected. Third, by defining their goals in terms of preventing, rather than finding, violations. (p. 142) Inspectors must be knowledgeable about the underlying social goals of the programs and how the regulations they enforce contribute to those objectives. While they must not retreat from the goals of the agency, it is both desirable and possible for inspectors to respond to the concerns and anxieties of the business and industry. (p. 143)

DAY & KLEIN 1981 Even where the regulatory agency expounds a deterrent style of enforcement, the nursing home surveyor seeks to build a trusting relationship with the home and, thereby, tries to promote self-regulation.

DIVER 1980 Motivation to underreport violations stems partly from bribery, but more commonly from the sense of empathy or allegiance bred by personal contact or professional kinship with personnel of the regulated firm. This is especially true if the inspector believes that the violation resulted from inadvertence or involved no serious risk to others or social cost

FOOHEY 1981 Nursing homes run by RNs and LPNs received the highest ratings. The fact that state surveyors are also nurses may contribute to the higher rating since they will react more favorably to a nurse-administrator. (p. 51)

FRANK 1984 Study findings concerning threats and assaults against inspectors in two Wisconsin regulatory agencies refute the belief that assaults are caused by the particular characteristics of a few inspectors: 79% of food inspectors and 67% of plant industry inspectors reported having been threatened or assaulted, and nearly half of those reported three or more incidents. Wide variations were observed between agencies: in the majority of cases of threats or assaults against inspectors, the incidents occurred in anticipation of or

following an enforcement action. The assailants appear to be venting their hostility against inspectors, showing contempt for the entire regulatory program, and trying to intimidate the inspector into softening their enforcement action.

HAWKINS 1984 Parity in professional skills and training between inspectors and corporate managers contributes to shared understanding of violations as health risks. Significance of long-term relationships with the inspectees is notable where the corporation's activity occupies a gray area; past experience then influences inspector's decision. Work and experience involving uncertainty and risk influence prospects for a cooperative relationship. In conclusion, it is noted that officers were concerned with obtaining the respect of the trader: for this reason, the responsiveness of the trader to warnings influenced the officer's sympathy.

HAWKINS 1983 In order to remedy problems efficiently, regulatory agents cultivate amicable social relationships with inspectees using a variety of persuasive tactics. The "demeanor" of the regulated industry acquires significance in the course of the relationship: the enforcer seeks responsiveness, which signals the industry's intent to comply. A reasonable attitude on the part of the enforcer generates the trust which enhances industry's openness to alerting the agency to problems. The agency needs

the trust of the industry for a sensitive information system. (p. 49)

HEMENWAY 1985 The inspector's job is stressful. The inspector can lessen this stress if the inspectee understands his plight. One way to decrease stress is to understand the problems of the inspectee, and to become convinced of the inspectee's good intention and the merits of his case. The inspector and inspectee can also impose costs on each other. The inspector can arrive at odd hours or disrupt operations. The inspectee can withhold information or complain to the inspector's supervisor. The inspectee can reward the inspector with money or job offers, or with friendship, respect, and approval. Unlike agency capture, inspector capture benefits only the individual inspectee and can injure the industry as a whole. (p. 50) Inspectors can be more or less captured, lax about reporting different types of violations, or more or less lax at different times. The ability to capture an inspector depends on inspector characteristics and on the opportunities and power afforded to the inspectee by the inspection environment. Inspector characteristics conducive to capture include: similar background with inspectee; frequent personal contacts with inspectees with discussion, explanation, argument, flattery; and little contact with peers or protected groups. The professional status of an inspector, especially if it differs from the inspectee, reduces the chance of capture.

LYNXWEILER 1983 The author found that company size was inversely related to size of fine. Larger companies, particularly in the Midwest and Western regions, hired personnel to correct violations. The OSM inspectors empathized with these technicians, who were of similar background and shared an understanding of regulations. In smaller companies, inspectors often faced operators who were ignorant of, or hostile to, the OSM mission. Inspectors were also affected by corporate intimidation: personnel of larger companies were quite civil to inspectors personally, while ever-ready to challenge legally their reports. This combination of politesse and legal threat placed the inspector in a more deferential relationship to larger companies.

OSHA 1985 The FOM requires CSHOs to ensure that they make a good first impression by dressing appropriately for the type of establishment to be inspected, wear required protective equipment properly, and abide by all company comportment rules. It further requires CSHOs to avoid becoming a source of resentment and to conduct the inspection efficiently. The CSHOs are advised to encourage dialogue and to offer suggestions for abatement. The CSHOs are required to maintain a “balanced” approach to management and labor and to be administratively thorough in their inspection.

SCHUCK 1972 Meat processors, operating on a narrow margin of profitability, have every incentive to evade sanitation, quality, and safety standards in order to cut costs. To forestall the threat of an inspector ordering the delay of production, the packer offers the prospect of overtime and gifts or favors, or may employ vicious physical and verbal attacks on inspectors; many of these instances are recorded in USDA files. To the inspector, small favors are not suspect, but rather are a part of doing business congenially. The practice of accepting small amounts of products for one’s use at home is called “cumshaw”; it functions as a way of getting along with the lion in the lion’s den. If an inspector should refuse to accept the gratuity, it would be more difficult to get the job done because the trust and cooperation of plant workers would be lost. Inspectors insist that while accepting gifts makes the job easier, it does not affect decisions in the plant.

SHOVER 1986 For Western mining personnel and inspectors, a shared perception of regulation as a legitimate government function contributed to smoother personal relations. By contrast, Appalachian operators’ highly individualistic values as well as the corruption of the states contributed to considerable tension between operators and inspectors. The Inspection and Enforcement program ‘was the most publicly visible component of the GSM’s operations and became a major symbolic issue around which the states and small, economically marginal operators rallied their resistance efforts. Coal operators depicted inspectors as uninformed, inflexible, and unreasonable. (p. 79)

SHOVER 1984 In (OSM) Region West, mines tend to be large and complicated and employ specialized reclamation personnel, who, like the inspectors, are salaried technicians, are generally well educated, and tend to accept the principles of regulation. They can explain variations in control plans and are generally civil and reasonable toward inspectors. In Region East, by contrast, inspectors must usually deal with production people who tend to be poorly educated, lack a detailed understanding of the regulations, and may be unsympathetic toward the inspectors whom they see as interrupting their production activities. (p. 138)

VLADECK 1980 When state agencies first began to survey health facilities, most nursing home surveyors, and their supervisors, liked to think of themselves as professionals, and thus the colleagues and peers of those facilities they were surveying. The nursing home owner or administrator is still in a position to make the surveyor’s job easier. Although there is very little overt evidence of corruption in the survey process, there is also little evidence that, until recently, surveys were rigorous and effective. Americans tend to be uncomfortable with authoritarian face-to-face relations, and, as the sociologist Jerome H. Skolnick pointed out, relations between adversaries tend to “regress” into cooperative ones. (Cites Jerome H. Skolnick, “Social Control in the Adversary System,” Journal of Conflict Resolution II (March 1967): 52-63.)

YOUNGSTROM 1979 While the level of control over OSHA inspector’s work has

increased, the inspector's desire to avoid intimidation by industry will cause him not to cite violations. Thus the attitudes of the employer continue to be an important factor in OSHA inspections.

### 2.2.2 INSPECTORS' RELATIONSHIPS WITH THE PROTECTED GROUPS

HEMENWAY 1985 Although OSHA inspectors are required to seek the views of labor, fear of management reprisals may stifle this input. More information is elicited when workers are better protected. One method is for the inspector to interview large numbers of workers away from management. (p. 19) The (housing) inspector, on the other hand, usually views tenants with neither sympathy nor empathy. Some tenants complain in order to avoid paying rent. (p. 89)

NELKIN 1984 (Tom, a print machine operator, at a university) "OSHA is all we have to work with, and OSHA is nothing. ...I was alarmed when I realized how ineffective OSHA really is."

### 2.2.3 AGENCY MANAGEMENT

#### 2.2.3.1 FEED-BACK ON PERFORMANCE FROM MANAGERS

BARDACH & KAGAN 1983 Management should give feedback to inspectors to guide and support discretionary decisions. Memos should be sent informing the inspector of the reasons why a citation did not result in prosecution. (p. 160)

COMPTROLLER GENERAL 1988 Supervisors did not review OSHA-9 forms and did not provide necessary feedback to the compliance officers. This caused many hazards to be identified and not cited, and other compliance officers stopped reporting hazards that they believed were not covered by standards. (See 1.3.2.5]

FRANK & LOMBNESS 1988 One reason inspectors feel they lack the time to adequately pursue education as part of a collaborative persuasion strategy of gaining compliance is the department's emphasis on efficiency and "management by the numbers." Several inspectors mentioned the computer printout that supervisors periodically show to inspectors indicating the average amount of time spent by the inspector on various kinds of tasks and how the inspector compares to other inspectors in the department.

#### 2.2.3.2 GUIDANCE ON POLICY/PARTICIPATION IN DECISION MAKING

FRANK & LOMBNESS 1988 Because supervisors frequently fail to communicate any rational reasons for their enforcement decisions, many inspectors presume that "politics" and "political interference" are the explanation. To inspectors, "politics" refers to violators calling supervisors, the central office, the secretary of agriculture, members of the board of agriculture, or legislators to force the inspector to back off or to have enforcement action blocked at a higher level. Many of the inspectors expressed their belief that this frequently happens and that the "central office" is responsive to these kinds of pressures.

LEFF 1988 Leff cites examples of management overriding his recommendations for

penalties and closings in situations of glaring violations.

SCHUCK 1972 Supervisors offered no guidance to inspectors on how to get along with meat packers and whether to accept gifts, other than to use “common sense.”

YOUNGSTROM 1979 In the mid-1970s at OSHA, acting supervisors functioned as advisors, and the group of industrial hygienists worked like a team and passed recommendations “up the line.” Within a few years, however, inspections focused on creating a paper record of the workplace which was used in important decision-making at higher management levels. This management activity separated the inspectors themselves from the decision-making process.

### 2.2.3.3 AGENCY SUPPORT/PROTECTION OF INSPECTORS

SCHUCK 1972 To old-timer meat inspectors, the Department of Agriculture had been a nurturing provider, which suddenly turned on the inspectors by indicting them, often without due process of law. To newer inspectors, however, the situation confirmed their perception of USDA as simply a cold and neutral bureaucracy with an instinct for political survival. Files made public under a Freedom of Information Act request revealed that the USDA has failed to take action against packers who have attacked inspectors. The General Accounting Office has repeatedly documented the low morale of the inspection corps, and attributed it largely to the USDA’s failure to back up its inspectors.

### 2.2.4 PEER RELATIONS

BRAITHWAITE 1985 To be effective, regulatory agencies must put considerable trust in the wisdom of their inspectors and have very flexible enforcement guidelines. This wisdom can be developed through peer review. It cannot be fully achieved through guidelines. (p. 138)

HAWKINS 1984 A cooperative approach was also influenced by the fact that the agency infrequently prosecuted, and was reinforced by desire to gain respect of colleagues.

SCHUCK 1972 Pressure to conform to the practice of accepting gratuities from packers comes almost as much from other inspectors as from packers. Old-timers tell new recruits that a good inspector will not pay for his Sunday dinner; that everyone takes the gifts and always have; and that it has nothing to do with doing one’s duty. There are unwritten rules and moral strictures, the most important-being not to let the acceptance of gifts influence judgement.

YOUNG 1987 According to early Bureau of Chemistry officials, the organization and plan of action under Commissioner Walter Campbell stimulated both cooperation and healthy competition among inspectors, “promoting a sound esprit de corps and efficient work.”

## 2.3 INSPECTION METHOD/CONSTRAINTS

Like agencies, inspectors may adopt a flexible or rigid style of enforcement. Inspector style may be in part determined by agency culture, or by the adequacy of inspector



time, resources, training, and methods. The degree of flexibility may be determined by the need to apply professional judgement or the inspector's desire to create a cooperative environment.

### 2.3.1 INSPECTOR USE OF COOPERATIVE/COMPLIANCE STRATEGY

BARDACH & KAGAN 198Z When enforcement officials were questioned about "plea bargaining", the authors were told that the practice was no longer permitted. The authors conclude that officials continue to exercise discretion while administrators are uncomfortable about admitting to it in the strict enforcement atmosphere. (p. 75)

CHRISTIANSON 1979 The inspector has an employment incentive to minimize job-related conflict situations by practicing lenient enforcement.

DANACEAU 1982 The regulatory agency must establish a framework and ground rules broad enough to allow the inspector enough flexibility to develop an on-site enforcement program in which he can make decisions that respond to both the concerns of the company he is inspecting and the program he represents.

DAY & KLEIN 1981 Nursing home surveyors diverge from regulatory strategy of deterrence which employs legalistic codes and penalty assessment, expanding their role to include strong elements of negotiation and consultation.

FOOHEY 1981 Nursing home managers may disregard a survey done to the letter as being overcritical or a personal affront. (p. 15) Furthermore, administrators realize that with 541 regulations to be enforced, it is not uncommon to be deficient in some areas. (p. 70)

FRANK & LOMBNESS 1988 Two approaches are used by inspectors for persuading violators to adopt more cooperative strategies. The education approach uses the powers of expertise and information to persuade the violator that compliance is a good idea and not as burdensome as the violator may have originally thought. The threatening approach relies upon the inspector's potential to use coercive power to persuade the violator that continued resistance is futile and, in the long run, will be more costly than compliance. Frequently, these tactics are used in tandem so that it is not possible to reify the strategies of education and threat of enforcement action.

HAWKINS 1984 Common justifications for a cooperative approach on the part of effluent officers were their image of industrialists' ignorance and "bad housekeeping", and the belief that deliberate widespread noncompliance would be averted only by careful negotiation. (p. 126)

HAWKINS 1983 Negotiating and bargaining tactics of compliance strategy are organized over time. The formal legal process is a backdrop to the negotiation, playing "a subtle but important role." (p. 39) Compliance itself is also continuous, requiring maintenance on the part of the regulated as well as vigilance on the part of the enforcer. Invoking formal law is the ultimate consequence of the failure of compliance strategy. Characteristics of compliance strategy include consultation that is offered to the polluter in exchange for cooperation and ultimate compliance; ability to discern true constraints from bluff; enough trust to sustain bargaining; and appeals to polluter's sense of social responsibility. Intent to comply may be accepted as evidence of compliance in the face of economic or technical impediments; however, the enforcer will be

less tolerant when he senses the need to preserve his credibility with the firm. A firm's lack of knowledge about the law and sanctioning process makes enforcer's bluffs possible. Bluffing is especially important where the agency considers legal sanctioning to be inadequate to compel the compliance of the polluter.

HEMENWAY 1985 OSHA and IRS inspectors are instructed not to bargain, but author believes it is common knowledge that they both do, and for good reason. The author believes it is possible for an ideal inspector not be a "completely accurate reporter".

LYNXWEILER 1983 The author found that inspectors regularly employed strategies to induce compliance, such as bargaining on violation notices, working of reports, and setting deadlines for remediation.

SHOVER 1986 The author creates a legalistic/conciliatory scale to measure differences in inspector orientation between Eastern and Western mining regions. Where the inspectee employs specialized personnel who can articulate the argument against enforcement action while behaving in a civil manner, the inspector is likely to employ a conciliatory, rather than legalistic, approach. Such relations were characteristic in Western mining regions, as opposed to Eastern Appalachia, where inspectors perceived operators to be recalcitrant and were aware of an historical record of weak enforcement. The Eastern inspectors approach was more legalistic, in order to bring in the rule of law. Shover postulates that where there was a highly divided political environment in the east and little consensus of the new role of federal regulation, inspectors enforced regulations consistently in order to establish credibility. The legalistic approach was, however, coupled with consultative interest; where the operators were ignorant of regulatory mandates, inspectors saw their chance to assist the company towards resolving violations and, thereby, hope to prevent future infractions. Field agents are faced with a choice of strategies in how to apply rules. A stringent strategy is based on criteria of uniformity, adherence to the letter of the law, and distrust of the regulated. On the contrary, accommodative implementation practices are based on a perceived need to take variable conditions into account and on a degree of trust that the regulated will adhere to the spirit of the law. A stringent implementation policy is intended to keep the field agents, as well as the regulated, in line. (p. 14)

VLADECK 1980 The practice of notifying nursing homes of when a survey would take place was tied to a concept of surveyors as "consultants," not police.

YOUNGSTROM 1979 In the late 1970s, OSHA inspectors were forbidden to do consultative inspections and were required to cite all violations. A legalistic system for writing reports increased management's control over inspectors' work.

### 2.3.2 INSPECTOR FLEXIBILITY/PROFESSIONAL JUDGEMENT

BARDACH & KAGAN 1982 'Regulatory agencies want rules to be applied uniformly, yet no amount of detail enforcement official must mediate between general rules and particular situations. (p. 71) Ideally, the inspector would retain strong enforcement tools but use them selectively. He would attempt to distinguish motives, have the capacity to empathize, and be reasonable. To use discretion wisely, the inspector would need technical knowledge of industrial processes. When new regulations would require large expenditures, the inspector would employ special standards and guidelines, and would treat smaller enterprises differentially.

Extended deadlines would be allowed in some circumstances, and temporary, less costly controls would be accepted where a reliable firm offers a permanent corrective plan. (pp. 136-7)  
The inspector's goal should be substantial, not literal compliance; he would overlook violations that pose no serious risk. Inspection by teams would facilitate a more analytical approach to enforcement. (p. 159)

BRAITHWAITE 1985 It is conceivable that nitpicking punitive enforcement of specific rules might corrupt the integrity of a total safety plan for a mine. For example, forcing a non-gassy mine to drive an extra tunnel to come into compliance with ventilation rules might so weaken the roof that the roof control plan is compromised. (p. 102)

DAY & KLEIN 1981 Outcome indicators, used to measure compliance, do not eliminate the need to understand the operation of the facility or to exercise professional judgement concerning staffing and patient care. Surveyors, in large part due to their professional background, are motivated to act in advisory and discretionary capacities. The authors suggest that if nursing home performance could truly be deduced from outcome measures, there would be no need to engage in negotiation with the homes. Instead, surveyors need to interpret nursing home characteristics and circumstances: are circumstances out of manager's control; is he/she doing her best to right matters? Staff turnover and long-term care of difficult patients needs to be considered. Plans of correction are usually negotiated with the agency to account for such factors.

DIVER 1980 In selecting targets, the enforcer's paramount need is to obtain signals from the environment that indicate the relative probabilities of finding violations. In the short run, inspectors cannot be certain whether particular violations represent purely random events or a tendency and, if the latter, what its properties might be. An inspector may need to accumulate considerable experience before he can confidently identify the significant variables. (p. 282) Inspectors have incentives both to underreport and to overreport violations, the most powerful being the desire to avoid criticism for errors of observation or judgement. The regulated party is not likely to bring to the agency's attention an error of commission, while an error of omission is most likely to be raised by a third party complaint. To avoid the risk of error, the inspector conducts an extensive, superficial examination for easily detectable violations, rather than an intensive inspection for less visible, and possibly more harmful, offenses. (p. 285) (See also 2.2.1.1., "Relationships with the Inspected: Professional Parity) The inspector must monitor behavior and conditions to determine compliance with regulatory standards. To do so, he must usually select a small number of elements to pay attention to, determine whether the purpose of the standards are advanced by applying them in each particular situation, and whether to ignore the situation, report it only to the regulated party, or to prepare a formal report to his supervisor. An inspector must adapt a simplifying mechanism to cope with this abundance of choices. In doing so, he is primarily guided by his desire to avoid criticism for errors of observation or judgment. (p. 284)

DREYER 1988 To measure the consistency of judgments made by Massachusetts DPH nursing home surveyors, a sub-study was conducted within the overall Quality Assurance by Sampling project. Thirteen review teams consisting of a nurse and a social worker were formed to inspect 43 facilities; each member of the team performed the walk-through separately. The average percent agreement between team-members for 22 items scored was 95.9. The greatest variance concerned care of Level III patients (86%),

restraints and safety hazards (88%). Percent agreement among teams was 95.8%. Average reliability for the 22 items, based on the Spearman-Brown coefficient of reliability, was .86 (measurements above .70 are considered satisfactory).

FOOHEY 1981 This study confirmed the hypothesis that the mean facility rating by nursing home inspectors would differ significantly since some inspectors may apply the regulations more strictly than others. (p. 52) The author cites unpublished study by Pattee, who found that the variation in scoring explained by surveyor alone was greater than the variation explained by facility characteristics, staff ratios, patient mix, location and ownership. (p. 9) The wording of standards may require subjective judgments by the surveyor. (p. 14) To determine whether a facility is in compliance with a given condition, a surveyor must decide whether the intent of a condition is met. (p. 3)

FRANKEL 1974 The British Alkali Act specified that the owner of any works must use the best practical means to prevent the escape of noxious or offensive discharges into the atmosphere. The best practical means can cover not only the type of equipment, but also training of operators and provision of spare parts. In general, the Chief Inspector does not attempt to define all the aspects of the "best practical means" but leaves that to the inspector on the spot.

HAWKINS 1984 Because they lacked confidence in the sampling program, effluent officers were reluctant to insist on strict compliance; technical breaches were not necessarily equivalent to threat of harm. Officers exercised considerable discretion in labeling samples "satisfactory" or "unsatisfactory" (pp. 121-22) Where a trader failed to meet the limit over a period of years, officers employed informal relaxations which became longstanding. It was felt that because the formal limit remained, the officer retained control and could judge cases individually for environmental impact. (pp. 153-160) The majority of officers adopt a problem-solving approach when responding to traders' difficulties. An officer determined culpability by the trader's intentions and attitude: he considered by the firm's history of compliance as well as positive actions that it was willing to take to remedy violation. In less industrialized areas, officers allowed smaller firms extra time to comply, but insisted on eventual compliance in order to maintain credibility and overall fairness. Officers in heavily industrialized areas, on the other hand, believed that small firms have little impact on the environment, and, therefore, to strictly adhere to procedures would threaten officers' credibility.

INSPECTOR GENERAL 1988 "...(A)batement dates are established based on the professional judgment of the CSHO to ensure the safety and health of all workers." (p. 29)

KEMANIS 1980 Vague statutory language creates monitoring and enforcement problems. Inspection teams must rely on survey, forms which incorporate language such as "qualified," "sufficient," and "satisfactory." Because different surveyors may have differing interpretations of the meaning of these words, the survey process becomes unreliable because of its susceptibility to subjective opinions.

NIVOLA 1978 The Boston Housing Inspection Service was a classic street-level bureaucracy: great discretion was vested in lower Level personnel who worked under minimal supervision in a hazardous, frustrating environment fraught with conflicting role - expectations. In a city with such an old housing stock, rules binding local inspectors to

the letter of the law would have resulted in citations for an overwhelming majority of buildings in the city. Neither the agency nor other institutions Connected with code enforcement could have managed the case load.

§CHUCK 1972 The complex regulations and instructions applied by the meat inspector leave him with an “irreducible residue of discretion.” much of what crosses from more remote contamination to a serious product violation is only a matter of degree. In the meat processing industry, it is commonplace that if the regulations were enforced to the letter, no meat processor in America would be in business. While the USDA maintains the myth that all rules are rigidly enforced, the inspector must decide which rules are worth enforcing.

UVILLER 1988 Police officers do a much better job when they assess a situation by themselves than when they apply what they think the rules require. Greater responsibility should be placed on them for intelligently performing their job.

VLADECK 1980 At one time, nursing home surveyors had substantial discretion. The only alternative to playing the consultative role was to close facilities, which was a politically unacceptable approach. The scandals of the 1970s changed the political balance from one in which rigorous inspection was more trouble than it was worth to one where the greatest fear was of revelations by a newspaper or legislative investigator of shocking conditions tri a nursing home deemed adequate by the survey process. Vladeck argues that the delicate balance must be found between extreme discretion and rigidity. The dilemma in striking the balance is that details, when enforced in the cases of the better facilities, may appear to be the worst kind of nit-picking and red tape; but equal justice requires that rules designed to curb the worst facilities be imposed identically on the best.

WILLEMMAIN 1983 Pertaining to the consistency of judgement, a study found that of 13 teams composed of RNs and MSWs, the average percent agreement was 95.9% in evaluating 22 items (range of 86-100%). The author concludes that surveyors are likely to make similar judgments when confronted with similar conditions, regardless of professional background.

YOUNG 1987 While the travel routes, the towns visited, and the classes of sample secured by the early food and drug inspectors were planned in Washington, they had “every opportunity for individual initiative.” They were to note all aspects of food and drug manufacture and sale and to report violations of the law. In this way, the complete enforcement of the law depended to a large degree on the initiative of the inspectors. Later, under new administration, the more experienced department regulated the pattern of their endeavors according to a more rational plan. Sets of priorities were determined by exigencies in the marketplace.

YOUNGSTROM 1979 In the mid-1970’s, OSHA inspectors were encouraged to use their common sense and to be flexible; they were supposed to find hazards and not violations of standards. In the late 1970’s, despite the increase in standardized procedure, the author believes that OSHA could not get rid of inspector discretion because any inspector working on his own has the latitude to do as he pleases and what he thinks is right. In practice, not all violations are cited. Faced with a hostile employer and an unorganized shop, the

inspector may just “go through the motions.”

### 2.3.3 ADEQUACY OF INSPECTOR TIME/RESOURCES

COMUITTEE ON GOVERNMENT OPERATIONS 1984 If resource constraints are preventing FDA from adequately monitoring for low, but potentially hazardous, levels of pesticide residues, the committee believes that the FDA and the DHHS should bring the matter to the attention of Congress. Furthermore, the FDA should maximize its limited resources by targeting sampling to cover only those commodities that pose the greatest potential health hazards to the public.

DIVER 1980 The inspector’s task is to monitor relevant behavior.

FRANK & LOMBNESS 1988 Lack of adequate time impedes compliance, initially, by simply preventing significance of the violations and how to correct them.

LEFF 1988 According to Charles Reisberg, Acting Deputy Commissioner of Environmental Affairs in the New York City Health Department, because of short-staffing and not Having time for the more lengthy tests of food-handling procedures, inspectors focus on immediately discernible violations such as dirty grills and unclean utensils and less on food-handling and temperature checks.

MASSACHUSETTS STATE AUDITOR’S REPORT 1988 Officials from many of the local boards of health pointed to the lack of adequate staffing and training resources as the causes of problems existing within the statewide food establishment sanitation system. According to these officials, restrictive municipal budgets have resulted in staffing shortages which cause health officials to shift resources to other areas of public health that appear to require higher priority.

OLSON 1983 The USDA believes that quality control based inspection is a more efficient use of inspection resources because it generates more information than traditional inspections, and it is in constant operation.

SHOVER 1986 The availability of resources determines agency policy. Insufficient budgets, inadequate personnel (in terms of either quantity or quality), and lack of adequate information tend to push agencies toward adopting negotiated compliance strategies.

U.S., 100D AND DRUG ADMINISTRATION (FDA) 1982 Several of the ten municipal sanitation programs reviewed failed to supply inspectors with important equipment, namely maximizing thermometers and sanitizer test kits; one city failed to provide flashlights, and one city did not have access to sample collection kits. The Massachusetts Division of Food and Drugs’ director believes the program, rated “marginal” by the FDA, needs more resources, including money, management, and technical resources.

VLADECK 1980 The number of available surveyors is such that many states have difficulty meeting the federal minimum of one complete survey per year, especially when serious deficiencies are found, and resurveys are required. Elected officials would rather spend scarce budget dollars on increased benefits to constituents rather than on inspection.

#### 2.3.4 ADEQUACY OF INSPECTOR'S KNOWLEDGE/TRAINING/METHODS/SCOPE

FRANK & LOMBNESS 1988 Lack of training clearly undermines inspectors' effectiveness. An inspector who does not know enough about the operation to offer explanations or advice is simply unable to offer useful information about abating or avoiding violations. A sense of incompetence undermines inspectors' confidence, making inspectors unwilling to be assertive in pursuing compliance. One inspector described a situation in which his lack of training kept him from taking action against some potentially contaminated food because he lacked the confidence to go ahead with the necessary enforcement action. The perceived lack of assertiveness of agency executives and their rumored willingness to bend to pressure not to enforce regulations also wears down the assertiveness of inspectors. The inspectors' power 'and assertiveness are further undermined if communication channels block the flow of information that is needed to assertively promote regulatory goals.

FRANK 1984 Inspectors are trained as technicians with little training in any aspect of law enforcement, but at times are confronted with angry, hostile violators. They feel wholly unprepared to handle these incidents when they occur, and are strongly interested in receiving additional training in self-defense and in controlling threatening situations.

[c.f. 1.3.3.3.]

HALE 1987 Research on quality control inspects the inspection.

HAWKINS 1984 Where research was lacking, consented discharge limits were founded more on an historical precedent than on a scientific basis. Effluent officers believed that inadequate data led to imposition of unjustifiable limits. Officers on both sides of the controversy over damage and abatement costs ("reasonable" enforcement) rely on intuitive assumptions rather than true cost estimates required to identify "socially efficient" pollution levels. (p. 163) The least attention was paid to wider social costs. (pp. 167-8)

IRWIN 1989 It is widely believed that inspection results vary according to the sanitarian who performs restaurant inspections. An evaluation where several sanitarians inspected the same restaurant at the same time suggested that the sanitarians were fairly consistent in identifying violations of proper temperature controls and cross-contamination, but were less consistent on overall score or the combination of violations accounting for that score.

KEMANIS 1980 In order to provide state nursing home surveyors with an adequate data base for determining whether high quality care is actually being delivered, the homes should be required to implement a resident assessment system designed to measure residents' needs, required care, and achievement of care objectives. However, knowledge of appropriate treatment and expected outcomes of care is not fully developed for the long-term care setting because residents' reactions to various forms of treatment and environment are difficult to determine. The resident assessment concept is necessarily an evolving one and systems will continue to improve as more knowledge is gathered on long-term care. Federal inaction has delayed the implementation of existing resident assessment systems developed by HEW in the 1970s; these should form the basis of resident assessment while research efforts continue.

U.S. FOOD AND DRUG ADMINISTRATION (FDA) 1982 The FDA finds that the training conducted in the Massachusetts Food Sanitation Program is largely inadequate. At the time of the 1982 evaluation, a state food and drug inspector conducted the training which consisted of conducting joint inspections and discussing them in a classroom situation. Three of the ten cities reviewed failed to provide continuing formalized training to inspection staff. The Massachusetts Division of Food and Drugs' director believes there is a lack of consistency in the conduct of inspections, including the approach to the inspection, the method of making observations and the reporting of those observations. The FDA scored establishments in the ten cities an average of 62.8 (marginal), while the average inspection rated 95.5 (excellent). The FDA recommends that to promote uniformity of rule interpretation and inspection methods, the Massachusetts Division of Food and Drugs should sponsor and present formal training programs for municipal inspectors.

WEEKS & JORDAN 1985 The Federal Mine Safety and Health Review Commission's National Gypsum decision raised the question of the proper level for making policy. The authors maintain that it is not consistent with the nature of dust-induced respiratory disease nor with long-term incentives to delegate enforcement policy to an individual inspector who confines his attention to a few sample. The authors maintain that authority should be held at a higher level.

YOUNGSTROM 1979 The little formal training that the author received for OSHA inspections consisted of learning to fill out forms and follow procedures. The weekly meetings to discuss inspections were far more helpful; there was a sense of mutual support in making difficult policy decisions. Continuing education and the circulating of journals served to keep inspectors informed. The training seems not to have improved with stricter management control initiated in the late 1970's. Better training and more emphasis on standards rather than documentation would better enable inspectors to fulfill the purpose of the law.

### 2.3.5 INSPECTOR'S ROLE IN PROTEST RESOLUTION/RULE INTERPRETATION

COMPTROLLER GENERAL 1978 OSHA and the state agencies withdrew or modified citations based on incomplete information or misunderstanding of facts. In some instances, the inspector was not consulted before the citation was modified or withdrawn. The Comptroller General recommends discussing inspection details with the compliance officers before dismissing citations.

### 2.3.6 FACTORS AFFECTING INSPECTION INTENSITY

CARSON 1970 Evidence suggests that far from being irrelevant, "moral fault" plays a significant part in shaping the actions taken against offenders by the British Factory Inspectorate.

DIVER 1980 A widely recognized device for simplifying analysis is to substitute an



“acceptable level” goal for a maximizing objective. (p. 273)

FRANK & LOMBNESS 1988 Inspectors frequently commented on conditions within the agency that frustrated them, making them less assertive about seeing to it that violations were corrected and wearing down inspectors’ will to enforce the law. Arbitrary decisions by supervisors, organizational norms de-emphasizing an assertive role, and limited communication channels contribute to the gradual wearing down of enthusiasm and responsiveness to violations. ‘Given the strong message that enforcement action was to be strongly avoided, inspectors did not view formal action as a viable option in most cases unless there was a long, long history of non compliance. In some cases, however, inspectors concluded that an adversarial stance and formal action were the only means of obtaining compliance. In some of these cases, agency policy actively prevented enforcement and agency executives appeared to stall enforcement action and block inspectors’ attempts to proceed with a prosecution, even though the violations were significant and posed potential public health risks.

HALE 1987. Research on quality control inspectors confirms that inspectors tend to stop the process of inspection once they have found one fault, since they generally expect there not to be more than one in any one article. The expectations or mental models of the inspectors will govern how they carry out the inspection.

HEMENWAY 1985 Strict inspection and enforcement of the housing codes and forced upgrading of blocks of substandard apartments could be disastrous, leading to higher rents and the pushing out of the poor. Piecemeal attempts to ameliorate conditions can also hasten abandonments, since the cost of required improvements will generally exceed the increase in property values. Therefore, housing authorities, and the courts, are usually not zealous enforcers of the codes. The agency will try to ensure quick correction of certain infractions, such as inadequate heat, but in general, the housing inspector cannot gain much satisfaction from viewing the ultimate results of his work. (p. 40)

JONES 1977 The need for most governmental services of the particularistic type is inversely related to social well-being. Social well-being is directly related to the awareness of government as an instrument for alleviating a social need.

KAGAN 1984 Police officers, while viewing many law-breakers as incorrigible, see others as capable of being rehabilitated. Because regulatory inspectors most often deal with “legitimate businesses,” this rehabilitative ideal is more prominent. Correction of the violation will seem more appropriate than retribution. (p. 41) If technically sophisticated corporate engineers persuade an inspector to accept as adequate that which is really dangerous, the result can be large-scale disaster for which the agency will often be blamed. By contrast, the police are seldom blamed for crime. If the inspector fails to exercise good judgment, regulatory violators that are let go might be detected by employees, citizen groups, or journalists. Regulated businesses can complain about breaks being given to competitors. When a calamitous accident occurs, serious harm or scandal is revealed, or where pro-regulation interest groups are well organized, agencies may treat undue leniency as the type of error most devoutly to be avoided. (p. 56)

SHOVER 1986 The OSM Region East managers believed that aggressive enforcement against known violators would enhance the credibility and legitimacy of

OSM and its operations among the mine operators. (p. 99)

SMITH 1986, OSHA officials claimed that inspectors in 1977-79 were very worried that negligence suits would be brought against them if workers sustained harm from a condition about which they had complained. A district court ruled in 1978 that if a compliance officer were authorized to inspect a machine and decided not to, the agency could be sued if an employee were later injured due to the machine's nonconformance with an OSHA standard. Inspectors reportedly perceived employee complaints to be an especially fertile ground for potential negligence suits and took precautions to protect themselves by collecting more air samples, for example, in complaint than in general schedule inspections, and by exercising more care in writing their post-inspection reports.

TYE 1978 No clear standards exist within the NRC as to what constitutes a safety hazard. Inspectors typically diminish the safety significance of their inspection findings and impose weaker than necessary sanctions against licensees. Of 1,694 items of noncompliance uncovered during FY 1977, NRC inspectors listed only 3 in the safety-related category.

WEIL 1988 Union mine workers' safety and health committee exercises individuals' right to instigate inspections. This means of representation was associated with twice the number of unionized mines receiving inspections as non-unionized mines in 1981-83. Employee representatives were also able to improve enforcement through greater inspection surveillance by shortening time spans for abatements, and by acting as parties to employer appeal procedures.

WEIL 1987 Union establishments are more likely to receive safety and health inspections, face greater scrutiny in the course of those inspections, and pay higher penalties for violations. The author believes that the employee's right to accompany the inspector is the primary mechanism leading to higher intensity. Employees accompany inspectors in 47.8% to 69.8% (depending upon establishment size) of inspections in unionized workplaces compared to 2.7% - 3.7% in non-unionized workplaces.

## LIST OF ACRONYMS

AFL-CIO	American Federation of Labor-Congress of Industrial Organizations
BLS	Bureau of Labor Statistics
CSHO	Compliance Safety and Health Officer
DHHS	Department of Health and Human Services
DOL	Department of Labor
DPH	Department of Public Health
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FDA	Food and Drug Administration
FOM	Field Operation Manual
FY	Fiscal Year
GAO	General Accounting Office
GBP	Gravity Based Penalty
GDC	General Duty Clause
GSPG	Government Service Pay Grade
HEW	Department of Health, Education and Welfare
HHS	Health and Human Services
ICC	Interstate Commerce Commission
IOC	Inspection of Care
IRS	Internal Revenue Service
IMIS	Integrated Management Information System
LPN	Licensed Practical Nurse
MIS	Management Information system
MSHA	Mine Safety and Health Administration
MSW	Masters of Social Work
NAS	National Academy of Sciences

NIFI National Institute of Food Service Industries

NIOSH National Institute for Occupational Safety and Health

NRC Nuclear Regulatory Commission

OSHA Occupational Safety and Health Administration

OSM Office of Surface Mining Reclamation and Enforcement Registered Nurse

SMRCA Surface Mining Control and Reclamation Act of 1977

USDA United States Department of Agriculture