

The Going-Out-of-Business Myth

The public needs regulatory safeguards to protect our health, safety, environment, civil rights, and welfare. Corporate special interests, however, have an interest in avoiding spending a single dime to improve their destructive behavior. Again and again, when new regulatory protections have been proposed, corporate lobbyists have argued that business would be bankrupted and forced to go out of business. Again and again, they have been proven wrong.

Case Study	<i>Ex ante</i>	<i>Ex post</i>
Asbestos	“When the Occupational Safety and Health Administration (OSHA) instituted regulations covering exposure to asbestos in the early 1970s, [it] hired a consulting firm to estimate the cost of compliance.” ¹	“Two later studies found that the original prediction for the cost of compliance was more than double the actual cost, because of overly static assumptions.” ²
Benzene	“In the late 1970s, the chemical industry predicted that controlling benzene emissions would cost \$350,000 per plant.” ³	“Shortly after these predictions were made, however, the plants developed a process that substituted other chemicals for benzene and virtually eliminated control costs.” ⁴
CFCs	“In 1988, reducing CFC production by 50 percent within 10 years was estimated by the EPA to cost \$3.55 per kilogram. By 1993, the goal had become much more ambitious: complete elimination of CFC production, with the deadline moved up two years, to 1996.” ⁵	<p>“Nevertheless, the estimated cost of compliance fell more than 30 percent, to \$2.45 per kilogram. And where substitutes for certain CFCs had not been expected to be available for eight or nine years, industry was able to identify and adopt substitutes in as little as two years.”⁶</p> <p>Additionally, regulated industry achieved substantial costs savings as a result of the CFC phase-out. For example, “when the international phase-out of ozone-destroying CFCs got underway, a company called Nortel began looking for substitutes. The company, which had used the chemicals as a cleaning agent, invested \$1 million to purchase and employ new hardware. Once the redesigned system was in place, however, Nortel found that it actually saved \$4 million in chemical waste-disposal costs and CFC purchases.”⁷</p>

CFCs in Automobile Air Conditioners	“In 1993 car manufacturers estimated that the price of a new car would increase by \$650 to \$1,200 due to new regulations limiting the use of CFCs.” ⁸	“In 1997 the actual cost was estimated to be \$40 to \$400 per car.” ⁹
Coke Ovens (1976/1987)	<i>OSHA Rule: Overall.</i> “The original OSHA estimate for the cost of complying with the 1976 coke oven standard was more than five times higher than estimates of actual costs. OSHA’s contractor suggested that complying with the standard would cost from \$200 million to more than \$1 billion.” ¹⁰	“However, a Council on Wage-Price Stability study later estimated the actual cost of the standard to be \$160 million. . . . Ultimately, firms were able to meet the standard without incurring all of the capital costs in the first year, and actual compliance costs were dramatically lower than originally predicted.” ¹¹
	<i>OSHA Rule: RIA Sample.</i> “The OSHA consultant estimated that three steel firms in their sample would spend \$93 million on capital equipment and \$34 million in annual operating costs to comply with the regulations.” ¹²	“A later study by Arthur Andersen determined that the three firms actually spent between \$5 million and \$7 million in 1977 to comply with the standard, and only \$1 million to \$2 million on capital expenditures.” ¹³
	<i>EPA Rule.</i> “In the late 1980s, coke production again came under regulatory scrutiny, this time by the EPA. In 1987, the agency estimated that the cost of controlling hazardous air pollution from coke ovens would be roughly \$4 billion.” ¹⁴	“By 1991 that estimate fell to between \$250 million and \$400 million.” ¹⁵
Cotton Dust (1978)	<i>Total Cost.</i> “OSHA’s estimate in the Final Regulatory Impact Analysis placed the textile manufacturing sector’s cost of compliance at \$280.3 million annually (1982 dollars, for amortized capital spending, incremental operations and maintenance, and other new spending).” ¹⁶	“However, actual spending is estimated to have been only about a third of this amount, \$82.8 annually (also 1982 dollars), chiefly because of the advantageous economics of the plant modernization push that was widely undertaken across the sector.” ¹⁷

Other Consequences. “Concern was expressed in the rulemaking that smaller textile firms could encounter substantial constraints in raising capital for compliance-related improvements, and that the standard would tilt the sector’s competitive center toward newer and more modern plants. . . . Also, control equipment suppliers argued during the rulemaking that serious bottlenecks would arise in trying to retrofit the industry’s equipment in short order.”¹⁸

“Nonetheless, the actual effects in all these respects proved to be modest and generally bearable.”¹⁹

Ethylene Oxide (1984)	“There was little concern at the time of the rulemaking that the standard would entail substantial financial or economic consequences for the industry or the national economy, because average spending for compliance per hospital was estimated to total no more than \$1,500 to \$3,500 annually.” ²⁰	“There is no evidence that the outcome differed from these expectations.” ²¹
Formaldehyde (1987)	“OSHA’s final estimate placed the industry’s compliance costs at \$11.4 million annually (1987 dollars). (Cost savings of \$1.7 million annually from avoided medical expenses also were identified.)” ²²	“Actual spending appears to have been about half this level, \$6.0 million annually.” ²³
Grain Handling Facilities (1987)	“OSHA estimated the sector’s total compliance costs in the range of \$41.4 million to \$68.8 million annually (1985 dollars; spanning the incremental need for equipment and actions across the 13 separate provisions) and avoided property losses at \$35.4 million annually (as compliance reduced the number of facility explosions and serious fires). These calculations yielded an estimated net cost of compliance in the range of \$5.9 million to \$33.4 million annually.” ²⁴	“Now that nearly five years have passed since full compliance with the terms of the 1987 standard was mandated, the evidence is that few if any facilities have ceased operation as a result of the standard—an outcome contrary to the economic impact estimates the industry submitted to the rulemaking. (The sector has, however, been subject to substantial economic pressures over this period for reasons not related to OSHA actions.)” ²⁵

Occupational Lead Exposures (1978)

“OSHA did, however, outline an outer bound of about \$91 million (1976 dollars) in total capital spending, based on a complete rebuilding of the industry using the Bergsoe smelter technology (then considered to be the most cost-effective option). In an early 1980s revision of the estimates, OSHA placed the cost of PEL compliance at a capital requirement of \$125 million (1982 dollars), or 1.3 cents annually per pound of production (\$150 million and 1.6 cents/lb, respectively, in 1992 dollars).”²⁶

“Nevertheless, the industry’s actual spending to date (through early 1994) has been far below these levels. Cumulative capital investment appears to total no more than \$20 million (1992 dollars), and some of this overlaps with expenditures to meet the various environmental requirements to which the industry has also been subject. Annual compliance spending appears to be averaging 0.5 cent/lb to 1.0 cent/lb (1992 dollars), and perhaps as low as 0.3 cent/lb, i.e. well below OSHA’s expectations at the time of the rulemaking and largely reflective of the industry’s strategy of minimizing expenditures on engineering controls and relying much more heavily on respirator and hygiene programs to reduce exposures.”²⁷

Strip Mining (1978)

“Prior to the passage of the 1978 Surface Mining Control and Reclamation Act, estimates for compliance costs ranged from \$6 to \$12 per ton of coal.”²⁸

“Actual costs for eastern coal operations have been in the range of 50 cents to \$1 per ton. After the regulations were adopted, the market switched away from coal deposits with high reclamation costs. Ready substitutes included surface-minable coal in flatter areas (with lower reclamation costs), and underground deposits.”²⁹

Vinyl Chloride (1974)

“The most credible figures put forth at the time were those of the agency’s technical consultant, which estimated total costs at around \$1 billion (1974 dollars), including capital expenses for new equipment, replacement of lost capacity, and incremental operating expenses.”³⁰

“According to the post-promulgation survey of industry members, however, actual spending amounted to only about a quarter of this estimate, \$228 million to \$278 million.”³¹

NOTES

1. Eban Goodstein, *Polluted Data*, AMER. PROSPECT, Nov.-Dec. 1997, available at <<http://www.prospect.org/web/page.ww?section=root&name=ViewPrint&articleId=4757>>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. OFFICE OF TECH. ASSESSMENT, U.S. CONG., GAUGING CONTROL TECHNOLOGY AND REGULATORY IMPACTS IN OCCUPATIONAL SAFETY AND HEALTH: AN APPRAISAL OF OSHA'S ANALYTICAL APPROACH 59 Tbl.3-3 (Rep. No. OTA-ENV-635, Sep. 1995), available at <http://www.wws.princeton.edu/~ota/disk1/1995/9531_n.html>.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* at 60 Tbl.3-3.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 59 Tbl.3-3.

27. *Id.*

28. Goodstein, *supra* note 1.

29. *Id.*

30. OTA, *supra* note 16, at 59 Tbl.3-3.

31. *Id.*