

**DEPARTMENT OF MINERALS
AND ENERGY**

Minerals and Energy for Development and Prosperity

MINE HEALTH AND SAFETY INSPECTORATE

**Guideline for
Enforcement of the
Mine Health and Safety Act**



Chief Inspector of Mines

ISSUE DATE: January 2005

Enforcement Guidelines

Containing:

*Enforcement principles with
Guidelines for controlling risk associated
with non-compliance and
for determining the appropriate action to
take in cases of non-compliance.*

Foreword

Foreword

This guideline document has been developed for use by the Mine Health and Safety Inspectorate (hereafter referred to as 'the Inspectorate') and will be reviewed from time to time, to incorporate new developments where appropriate.

The guidelines are intended to assist the Inspectorate in achieving a clear and consistent approach to the enforcement of the Mine Health and Safety Act of 1996 (hereafter referred to as 'the Act').

The Act introduced the concepts of risk assessment and occupational health and safety (OHS) management systems in the mining industry and this in turn, increased inconsistencies in interpreting the Inspectorate's enforcement responsibilities, both within and between the various regional offices.

Please make full use of this document, which is the result of much hard work and which represents the current collective wisdom of the Inspectorate.



M A Hermanus
CHIEF INSPECTOR OF MINES

Introduction

Enforcement involves identifying contraventions; bringing these to the attention of the offender/s; requiring preventive or remedial action and where necessary, applying penalties.

All stakeholders in the mining industry contribute to creating a safe and healthy industry. Whilst employers are primarily responsible for providing safe and healthy workplaces, the Department of Minerals and Energy is the lead agent in:

- Ensuring the health and safety of workers and the public affected by mining;
- Developing policies and legislation;
- Promoting awareness of health and safety amongst all stakeholders;
- Encouraging co-operation and continuous improvement in health and safety; and
- Promoting, monitoring and enforcing legislation and initiating prosecution in terms of the Mine Health and Safety Act of 1996 (Act No. 29 of 1996).

Enforcement



Purpose

This document outlines the guidelines upon which enforcement decisions are made and aims to achieve:

- Consistency in the enforcement of the Act by regional offices of the Inspectorate;
- A structured framework for decisions concerning the levels of enforcement; and
- Appropriate and timely enforcement interventions.

Effective enforcement will in turn contribute to:

- A systematic and effective risk assessment and management practice in the mining industry; and
- The effectiveness and efficacy of the Inspectorate.

The principles of enforcement

The following principles apply when deciding on the measures to be adopted to ensure compliance with the provisions of the Act:

- **Objective:** Enforcement action must achieve clear outcomes;
- **Proportionality and responsiveness:** Enforcement action must be appropriate, responsive, timely and the level of action taken commensurate with the risk and potential impact;

- **Transparency:** Enforcement measures must be transparent to enable stakeholders to understand what constitutes non-compliance with the provisions of the MHSA, as well as their own obligations;
- **Consistency, impartiality and non-discriminatory:** Enforcement action must be fair, consistent and equitable, taking into account the attitude towards health and safety, and actions of the alleged offender and any history of previous incidents and breaches of the MHSA;
- **Targeting:** Regulatory measures must be directed primarily at those whose activities generate considerable risk and/or serious harm to health and safety;
- **Due process:** The principles of justice must be observed and enforcement carried out within the powers and processes of the legislation; and
- **Policy compatibility:** Enforcement must be compatible with, and carried out within, other government policies and statutory requirements.

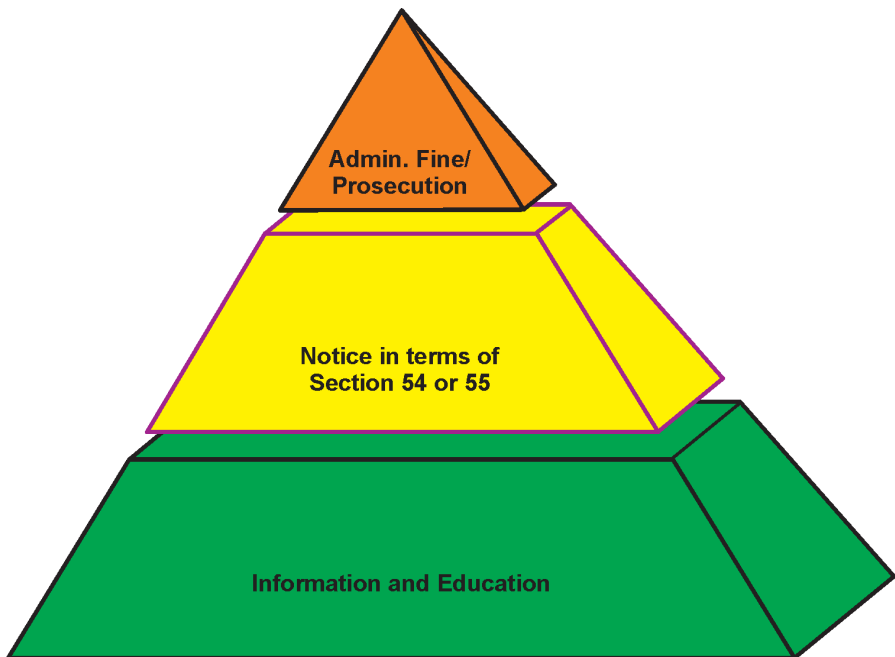
Enforcement measures

The seriousness of an offence must be judged against the following criteria:

- Magnitude of a contravention;
- Failure to comply with an instruction;
- Ineffective preventative health and safety management systems to prevent harm;
- Inadequate measures required to achieve compliance; and
- Previous history of non-compliance.

A graduated series of options are adopted with consultation and verbal directions as the starting point, progressing through statutory instructions to order compliance, or to an order to halt or suspend operations at a mine or an affected area of a mine; and finally, the recommendation of an administrative fine or prosecution for failure to comply.

This graduated series of options is generally referred to as the Enforcement Pyramid. The pyramid refers to the series of escalating alternatives, corresponding to successively more serious circumstances (see figure).



The Enforcement Pyramid

Hierarchy of enforcement measures

To facilitate the prevention of work-related death, injury and ill-health, the Inspectorate may make provision for formal or informal means of enforcement.

Information and education

This tier of enforcement takes the form of:

- Letters to mine employers and mine equipment suppliers and/or manufacturers, advising of statutory obligation and recourse issues;
- Education programmes or counselling sessions in the form of formal/informal meetings with stakeholders;
- Discussions within the tripartite structures; and
- Reviewing, modifying or upholding a previous instruction.

Instructions regarding occurrences, practices or conditions that endanger or may endanger health and safety

An Inspector may give any instruction to protect the health and/or safety of any person/s at a mine, bearing in mind the provisions of the guidelines issued in terms of Section 55G(1)(b) of the Act.

Instructions to halt or suspend operations at a mine or an affected area of the mine must be issued to address any immediate risk of harm to the safety or health of persons at a mine (Section 54(1) of the Act).

All oral instructions must be confirmed in writing at the earliest opportunity and provision must be made for prior representation from stakeholders, except when the delay caused by allowing representation could endanger the health or safety of persons.

Instructions enforcing compliance with any provisions of the Act

Written instruction to order compliance within a specified period may be issued to an employer to address any identified breach of legislation (See section 55(1) of the Act).

Administrative fines

An Inspector may recommend an administrative fine if s/he has reason to believe that an employer has failed to comply with any provision contemplated in section 91(1B) of the Act.

In cases where the following circumstances exist, an Inspector must recommend a fine, if s/he does not, s/he must give reasons for not making a recommendation in writing to the Principal Inspector.

- Contraventions or failures that pose a high risk of harm to persons directly affected by the activities at a mine; or
- A category of non-compliance contemplated in the guidelines issued in terms of Section 55G; or
- Knowingly exposing persons to serious hazards; or
- Repetitive failure to comply with instructions issued in the interest of health and safety.

Prosecution

Prosecution

Prosecution may be recommended to the Director: Public Prosecution if the Inspectorate is satisfied there is sufficient admissible and reliable evidence that an offence has been committed.

It will be usual practice to recommend prosecution of an employer where the offence resulted from his/her actions or omissions, bearing in mind the provision of section 91(1A) of the Act. However, the Inspectorate will also consider any part played in the offence by employees of the company, including directors and managers.

The following factors should be used to help decide whether to recommend prosecution:

- How much the outcome could have been anticipated;
- The extent of the offender's intentional negligence;
- The offender's attitude; and
- The recommendation's deterrent effect.

An assessment of a combination of all the relevant factors will determine if there is sufficient cause for prosecution to proceed.

In applying the law impartially and in a fair and consistent manner, it is necessary to consider the:

- Legal rights of the alleged offender;
- Interests and rights of victims; and
- Interests and rights of the public.

The application of enforcement action

The level of risk and the immediacy of the problem to be resolved will determine the level of enforcement to be applied.

The enclosed chart lists the steps to be taken and the factors to be considered, in determining the appropriate action.

Notes