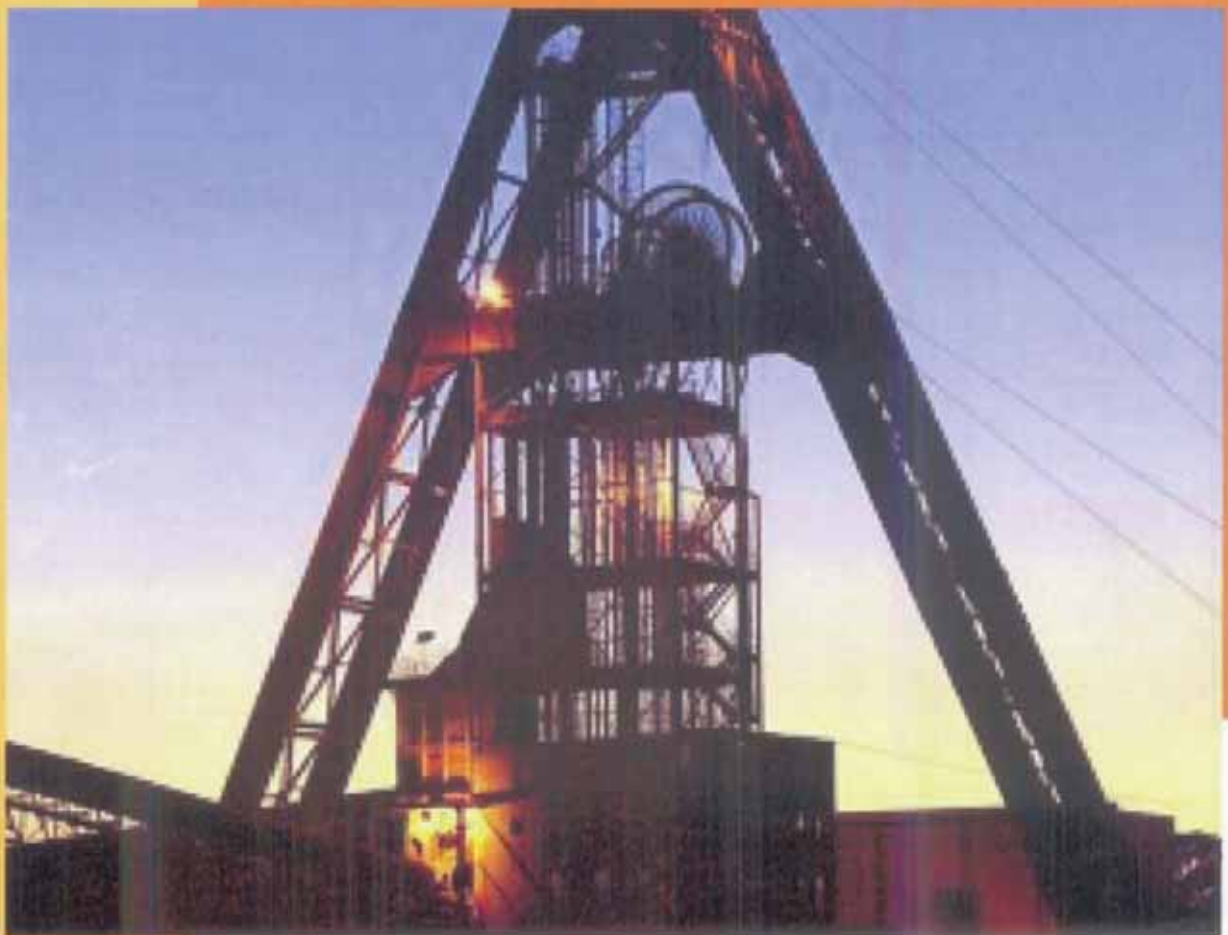


# Mine Health and Safety Inspectorate: Enforcement Guideline



**APPROVED**

---

Acting Chief Inspector of Mines  
Mr. MMA Zondi



mineral resources  
Department  
Mineral Resources  
REPUBLIC OF SOUTH AFRICA

## **1. INTRODUCTION**

All persons involved with the mining industry have a legal obligation to comply with the requirements of the health and safety legislation.

Whilst employers are primarily responsible for providing safe and healthy workplaces, the Department of Mineral Resources, through its Mine Inspectorate branch, regulates and promotes occupational health and safety at mines by administering the Mine Health and Safety Act, 1996, as amended from time to time (MHSA).

The primary objective of the MHSA is to ensure that mineral resources development in South African mines is carried out in a manner that is healthy and safe to employees and the public. The legislation provides a range of enforcement measures to help fulfil this objective.

Enforcement is a crucial element in controlling or regulating activities and gaining compliance with statutory requirements at mines. This is done by detecting contraventions, bringing them to the attention of the affected employees and employer, requiring preventative or remedial actions, and where necessary, applying punitive enforcement measures.

The MHSA further provides Inspectors with the discretion to decide, within the framework of the empowering legislative provisions, when enforcement is required and what measures are appropriate to encourage compliance, including but not limited to recommendation for prosecution. Equally so, it is important that such a decision is made on the basis of a careful assessment of circumstances and in line with the Department's enforcement approach, as well as that the discretion is exercised in a fair and reasonable manner.

The objective of this document is to provide guidance for Inspectors, industry and public on the enforcement measures used by the Department to enforce the legislation, particularly the principles according to which the inspectors powers to deal with dangerous conditions and ensuring compliance should be exercised.

## 2. PURPOSE

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

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

## 3. THE PRINCIPLES OF ENFORCEMENT

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

- **Objective:** Enforcement action must achieve clear outcomes and be based on reliable evidence and considered decision;
- **Proportionality and responsiveness:** Enforcement action must be appropriate, responsive, timely and the level of action taken must be 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. In taking a decision in any of the enforcement measures, all stakeholders (employers and union representatives) must be involved;
- **Consistency, impartiality and non-discriminatory:** Enforcement action must be fair, impartial, 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. Enforcement actions should result in similar outcomes in similar circumstances;
- **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 administrative justice must be observed and enforcement carried out within the powers and processes of the legislation. The principles of administrative are addressed by the Promotion of Administrative Justice Act, 2000; Note Section 33 of the Constitution of South Africa provides that everyone



has the right to administrative action that is lawful, reasonable and procedurally fair and that everyone whose rights have been adversely affected by an administrative action has the right to be given written reasons.

- **Accountability.** The MHSI is accountable to Government and the public at large (including employers and employees) for its actions; and
- **Policy compatibility.** Enforcement must be compatible with, and carried out within, other government policies and statutory requirements.

#### 4. TERMINOLOGY

All terms and definitions contained in this document bear the similar definitions as contained in section 102 of the MHSA.

#### 5. ENFORCEMENT MEASURES

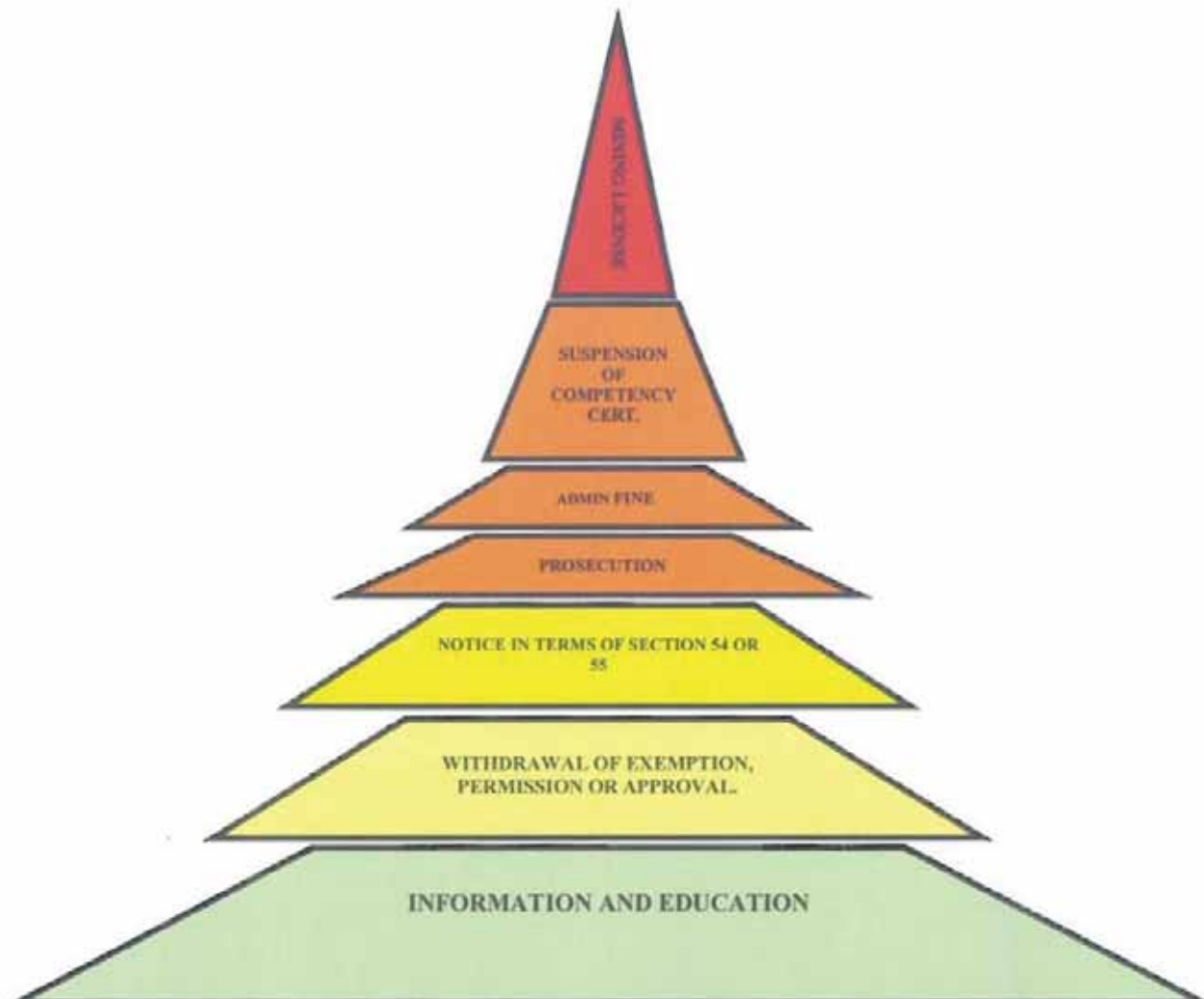
##### 5.1. The seriousness of an offence must be judged against the following criteria:

- Magnitude and potential consequences of a contravention;
- The risk of harm from the contravention;
- General levels of compliance;
- History of non-compliance;
- History of enforcement actions; and
- Incident history.

##### 5.2. A graduated range of options are adopted with providing information, consultation and verbal directions as the starting point; to withdrawal of exemption, permission or approval; progressing through statutory instructions to order compliance, or to an order to halt or suspend operations to deal with a dangerous occurrence, practice or condition at the mine or part of the mine; to the recommendation of an administrative fine; to suspension or cancellation of certificate of competency; to recommendation for prosecution; and finally as a last resort, recommendation for amendment, suspension or cancellation of a mining right or permit (mining licenses).

- 5.3. This graduated range of options is generally referred to as the Enforcement Pyramid. The pyramid refers to the range of escalating alternatives, corresponding to successively more serious circumstances (see figure1 below).

Figure 1: Enforcement Pyramid



## **6. HIERARCHY ENFORCEMENT MEASURES UNDER THE MHSA**

In administering the MHSA, Inspectors' primary measures are to promote health and safety and ensure compliance with the MHSA; and must where necessary conduct inspections, audits, investigations, inquiries, provide inputs into mining or prospecting rights applications, conducting examinations, issue certificates of competency, and process applications for exemptions from the provisions of the MHSA.

When performing any of the above activities, the primary measure is to promote health and safety. Inspectors have a range of additional measures at their disposal in seeking to secure compliance with the legislation and to ensure a proportionate response in dealing with dangerous conditions at mines and contraventions of the MHSA.

### **6.1 Information and education**

This enforcement measure takes the form of:

- Letters or directives to employers and suppliers/manufactures;
- Guidelines for mandatory COP and guidance notes;
- Meetings or workshops with all stakeholders;
- Discussions within the tripartite structures;
- Reviewing, modifying or upholding a previous instruction or directive; and
- Newsletters and News Flashes.

### **6.2 Withdrawal of exemption, permission or approval granted in terms of MHSA**

The Minister may exempt the employer of a mine from any or all the provisions of the MHSA and issue a certificate of exemption in terms of Section 79. The Minister may, however, amend or withdraw a certificate of exemption at any time.

### **6.3 Statutory instruction to order compliance (Section 55)**

If an inspector has reason to believe that an employer has failed to comply with the provisions of the Act; the inspector may instruct that employer in writing to take any steps that the inspector;

- (a) Considers necessary to comply with the provision; and
- (b) Specifies in the instruction.

When issuing such an instruction, the inspector must specify the period within which the prescribed steps must be taken. The period specified in an instruction may be extended by an inspector at any time by giving notice in writing to the person concerned.

### **6.4 Statutory instruction to deal with dangerous conditions (Section 54)**

If an inspector has reason to believe that any occurrence, practice or condition at a mine endangers or may endanger the health or safety of any person at the mine, the inspector may give any instruction necessary to protect the health or safety of person(s) at the mine, including but not limited to an instruction that:

- (a) Operations of the mine at the mine or part of the mine be halted;
- (b) The performance of any act or practice at the mine or a part of the mine be suspended or halted, and may place conditions on the performance of that act or practice;
- (c) The employer must take the steps set out in the instruction, within the specified period, to rectify the occurrence, practice or condition;
- (d) All affected persons , other than those who are required to assist in taking steps set out in the instruction, under the direct supervision of a member of management, be moved to safety;



## **6.5 Recommending and imposing of an Administrative fine (Sections: 55A)**

The issuing of an administrative fine is covered in the guideline to issue an administrative fine. An inspector may make a recommendation in writing to the Principal Inspector that a fine be imposed on an employer who has failed to comply with any provision contemplated in section 91(1B).

The Principal Inspector, after considering the recommendation and any representations by the employer may disregard the recommendation or impose a fine or refer the matter to the Prosecuting Authority.

## **6.6 Suspension and Cancellation of Certificate of Competency**

The Chief Inspector may suspend or cancel certain certificates of competency issued in terms of the MHSA if the holder has been guilty of gross negligence or misconduct or non-compliance with the regulations under the MHSA. This covers Mine Manager's, Mechanical or Electrical Engineer's, Mine Surveyor's, Mine Assayer's and Mine Overseer's certificates.

The Principal Inspector may suspend or recommend to the Chief Inspector for cancellation of certificates of competency issued in terms of the MHSA, if the holder is guilty of misconduct or gross negligence in the execution of his duties or suffers from any infirmity, likely to be detrimental to the efficient discharge of his duties. This covers Blasting, Onsetter's, Lampman's, Winding-engine driver, Locomotive-engine driver, Stationary-engine or Boiler attendant certificates.

## **6.7 Prosecution**

Prosecution may be recommended to the Director of Public Prosecution if the Inspectorate is satisfied that there is sufficient admissible and reliable evidence that an offence has been committed. Any person convicted of an offence in terms of MHSA may be sentenced to a fine or to imprisonment as may be prescribed.



## **6.8 Suspension or cancellation of mining right (mining license)**

In terms of the Minerals and Petroleum Resources Development Act, 2002 (MPRDA), the Minister may suspend or cancel a prospecting/mining right or permit if the holder thereof breaches any material terms and conditions of such right or permit.

The terms and conditions of a prospecting/mining right or permit include compliance with the relevant provisions of the MHSA.

## **7. CRITERIA FOR DECISION MAKING ON ENFORCEMENT**

### **7.1 Information and education**

This is an ongoing type of enforcement and it takes the form of informing and educating stakeholders. These records can be used to support any further enforcement measure as detailed in this document, if it is proven that the employer or employee willingly ignored instructions or advice as contained in these records and thus exposing employees to dangers that may lead to a fatal or serious injury or ill-health to an employee.

### **7.2 Withdrawal of exemption, permission or approval granted in terms of MHSA**

An inspector may after conducting an inspection, audit, or investigation at a mine, recommend to the Principal Inspector that an exemption, permission or approval from any regulation under the MHSA be amended, suspended, or withdrawn in the interests of health and safety of employees or other persons directly affected by activities at a mine.

The recommendation by an inspector needs to specify reasons for the recommended action, which may include, but not limited to, the following:

- Failure to comply with terms and conditions of the exemption, permission or approval.
- Repetitive and substantiated complaints relevant to the exemption, permission or approval by mine employees or the public.
- Dangerous occurrences, accidents or ill-health incidents relating to the exemption.
- Changes in the legislation of relevance to the exemption, permission or approval.

- Changes in the available technology of relevance to the exemption, permission or approval.
- Changes in the ownership of a mine of relevance to the exemption, permission or approval;
- Abuse of the exemption, permission or approval.

These records can be used to support any further enforcement measure as detailed in this document.

### **7.3 Statutory instruction to order compliance (Section 55)**

This enforcement measure is more relevant to non-immediate dangers detected by an inspector during an inspection, audit, investigation, or inquiry at a mine. When applying this enforcement measure, an inspector needs to consider the following:

- Which provisions of the MHSA were not complied with?
- What remedial steps should be taken?
- How long should an employer take to implement the remedial steps?

*\* Refer to annexure: 2 "A Form used for issuing Section 55 instruction".*

### **7.4 Statutory instruction to deal with dangerous conditions (Section 54)**

If an inspector, during an inspection or audit at a mine, has a reason to believe that any dangerous occurrence, practice, or condition endangers or may endanger the health or safety of mine employees, the inspector may give any instruction *necessary* to protect health and safety of mine employees. This may include, but not limited to the following:

- Halting of operations at a mine or part of a mine;
- Suspension or halting of any act or practice at a mine or part of a mine, or placing of conditions on the performance of that act or practice;
- Rectifying a dangerous occurrence, practice, or condition by taking remedial action within a specified period; and
- Removal of affected persons to safety, except those involved in taking the remedial action under the supervision of a senior member of management.

The purpose of halting operations at a mine or part of a mine should be to allow time for the employer to:

- (a) identify and analyse the root cause(s) of any significant risk(s) present or which may be present;
- (b) determine appropriate measures to protect employees;
- (c) implement the protective measures;
- (d) simply manage the risk;
- (e) audit all working places for similar deviations or other irregularities;
- (f) come up with a mine health and safety management system which will assist the manager to pro-actively identify and rectify non-compliances;
- (g) assess the adequacy and relevance of the system referred to under;
- (h) identify system failures;
- (i) investigate the reasons for system failure; and
- (j) come up with an action plan to prevent further recurrence of system failures.

Any instruction issued that operations at a mine or part of a mine be halted must either be confirmed, varied, or set aside by the Chief Inspector of Mines, or his delegate, as soon as practicable. In the event where the employer is expected to make representations to the CloM or his delegate regarding the uplifting of any statutory instruction, the CloM or his delegate must at all convenient times be available to attend to such representations.

***\* Refer to annexure: 1 "A Form used for issuing Section 54 instruction".***

## **7.5 Recommending and imposing of a fine (Sections: 55A)**

An inspector may make a recommendation in writing to the Principal Inspector that a fine be imposed on an employer who has failed to comply with any provision contemplated in section 91(1B).

In the recent review of the MHSA, the Section 55G that deals with a guideline on issues of administrative fines was repealed.

***\* Refer to annexure: 3 "Administrative Fine Guideline".***



## **7.6 Suspension and Cancellation of Certificate of Competency**

An inspector may after conducting an inspection, audit, investigation or inquiry at a mine, recommend to the Principal Inspector or request the Principal Inspector to recommend to the Chief Inspector to suspend or cancel certain certificates of competency issued in terms of the MHSA if the holder has been guilty of gross negligence or misconduct or non-compliance with the MHSA or its regulations.

This enforcement measure includes taking statements, collecting evidence, analysing events and preparing a report to be forwarded to the Chief Inspector of Mines or Principal Inspector of Mines for further action.

When deciding whether to suspend or cancel a certificate of competency, the Chief Inspector of Mines or Principal Inspector of Mines will judge the seriousness of the transgression against the magnitude of the contravention, failure to comply with an instruction and previous history of non-compliance by the holder of such certificate.

## **7.7 Prosecution**

Prosecution may be recommended to the Director Public Prosecution if the Inspectorate is satisfied that there is sufficient admissible and reliable evidence that an offence has been committed. Any person convicted of an offence in terms of MHSA may be sentenced to a fine or to imprisonment as may be prescribed.

The recommendations to prosecute that are associated to a fatal accident or serious injuries or ill-health incident may be made by a presiding officer. Some may be as result of continual intentional or negligent failure to meet requirements or instructions given by inspectors.

Subject to the above, and in the public interest, the presiding officer or inspector should normally consider recommending prosecution where, following an inquiry, inspection or audit, one or more of the circumstances, exist.



## **7.8 Suspension or cancellation of mining right (mining license)**

This enforcement measure is taken as a last resort after all the above enforcement measures have been instituted with no improvement on the part of the employer.

The Chief Inspector of Mines may collect all evidence, records, and copies of previous sanctions instituted against the employer to form part of a detailed submission to the Minister to support a recommendation to suspend or cancel a mining right or permit if the holder thereof breaches any material terms and conditions of such right or permit.

The terms and conditions of a mining right or permit include compliance with the relevant provisions of the MHSA.

## **8. ACCOUNTABILITY**

The Mine Health and Safety Inspectorate (Chief Inspector, Deputy Chief Inspector(s), Principal Inspectors, Senior Inspectors, and Inspectors) is accountable to the public for its actions. This means that inspectors must have policies and procedures against which they can measure themselves. A mechanism that is effective and easily accessible must be in place for dealing with comments and complaints arising from enforcements processes.

The policies and procedures for dealing with comments and handling complaints describe a complaints procedure, and explain the right of appeal as indicated in the MHSA in case of statutory instructions. The MHSI has issued a Policy and Procedure on the matter on dealing with complaints.

## **9. APPEALS**

Any person adversely affected by a decision of an Inspector, except a decision contemplated in section 55B, may appeal against that decision to the Chief Inspector of Mines. A detailed process of appeal is covered in section 57 of the MHSA.

Any person who is adversely affected by a decision of the Chief Inspector of Mines, either in terms of section 57(3) or in the exercise of any power under the MHSA, may appeal against the decision to the Labour Court. A detailed process of appeal is covered in section 58 of the MHSA.

## **10. ANNEXURES**

**Annexure 1** - Form for issuing of Statutory Instruction in terms of Section 54.

**Annexure 2** - Form for issuing of Statutory Instruction in terms of Section 55.

**Annexure 3** – Administrative Fine Guideline.

# SECTION 54

Annexure 1



mineral resources  
Department:  
Mineral Resources  
REPUBLIC OF SOUTH AFRICA

REGION

NOTICE OF ORDERS, SUSPENSIONS AND INSTRUCTIONS IN TERMS OF SECTIONS 54 (1)(a) AND 54 (1)(b) OF THE MINE HEALTH AND SAFETY ACT, 1996 (ACT 29 OF 1996), AS AMENDED.

Employer ..... Mine.....

Date..... Section..... Shaft.....

## A. List the Dangerous Occurrence/Practice/Conditions observed

.....

.....

.....

.....

.....

.....

## B. Summary of Risk Analysis

Factors to consider	Scale	Score				
		Transgression 1	Transgression 2	Transgression 3	Transgression 4	Transgression 5
1. Does the transgression endanger or may endanger health or safety of persons?	No = 0 Yes = 5					
2. Any similar or related transgression detected in the past 12 months?	No = 0 Yes = 3					
3. How many injury accidents related to this transgression were reported in the past 12 months?	NIL=0 ≥ 1 injuries reported the score = 3					
4. How many fatal accidents related to this transgression were reported in the past 12 months?	NIL=0 ≥ 1 fatal reported the score = 5					
Overall Outcome of the Risk Analysis						

3 ≤ Overall Score ≤ 6	7 ≤ Overall Score ≤ 16
Applicable to part of a mine	Applicable to all workings at a mine

**C. The orders and instructions (N.B directly linked to the above transgression(s))**

[illegible]

The employer is further instructed to, jointly with member(s) of health and safety committee or unions, fix the deviation(s), conduct a comprehensive audit for similar deviation(s), investigate reasons for system failure and institute an action plan to prevent further recurrence of system failures. This instruction shall remain in force until such time that the employer has complied with the instruction and a presentation made to the office of the Principal Inspector of Mines by the said employer and the member(s) of health and safety committee or unions.

In terms of section 54 (6), the instruction(s) take effect on ..... at .....

Inspector of Mines      Employer      H&S/Union Representative

In terms of section 54 (5), the instruction(s) is/are confirmed/varied/set aside.

Principal Inspector \_\_\_\_\_ Date \_\_\_\_\_



# SECTION 55

Annexure 2



mineral resources  
Department:  
Mineral Resources  
REPUBLIC OF SOUTH AFRICA

REGION

NOTICE OF ORDERS AND INSTRUCTIONS IN TERMS OF SECTION 55 (1) OF THE MINE HEALTH AND SAFETY ACT, 1996 (ACT 29 OF 1996), AS AMENDED.

Employer ..... Mine.....

Date..... Section..... Shaft.....

## A. List non-compliance with the provisions of the Act

Section/Regulation	Description of situation

## B. The instruction(s) given

.....

.....

.....

.....

.....

.....

In terms of section 55 (1), the instruction(s) take effect on ..... at .....

Inspector of Mines

Employer

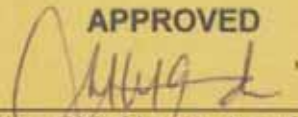
H&S/Union Representative

# **Guideline on Administrative Fine System**

**Issued by the Chief Inspector of Mines in terms of  
Section 49 (6) of the Mine Health and Safety Act,  
1996 (Act 29 of 1996), as amended**



**APPROVED**

  
Acting Chief Inspector of Mines  
Mr. MMA Zondi

Effective date: 01 April 2011



mineral resources  
Department:  
Mineral Resources  
REPUBLIC OF SOUTH AFRICA

## **TABLE OF CONTENTS**

<b>1. THE GUIDELINE.....</b>	<b>3</b>
<b>2. PURPOSE OF THE GUIDELINE .....</b>	<b>3</b>
<b>3. PRINCIPLES OF ENFORCEMENT .....</b>	<b>3-4</b>
<b>4. TERMINOLOGY .....</b>	<b>4</b>
<b>5. THE ADMINISTRATIVE FINE .....</b>	<b>4</b>
<b>6. RECOMMENDATION TO IMPOSE A FINE.....</b>	<b>5</b>
<b>7. CONSIDERATION OF THE RECOMMENDATION TO IMPOSE A FINE .....</b>	<b>5-6</b>
<b>8. IMPOSITION OF ADMINISTRATIVE FINE.....</b>	<b>6</b>
<b>9. PAYMENT OF ADMINISTRATIVE FINE .....</b>	<b>6</b>
<b>10. MAXIMUM FINES .....</b>	<b>6</b>

## **FORMS**

<b>DMR 198 - RECOMMENDATION TO IMPOSE A FINE.....</b>	<b>7-8</b>
<b>DMR 199 - IMPOSE OR DISREGARD AN ADMINISTRATIVE FINE .....</b>	<b>9-10</b>
<b>DMR 200 - REFERRAL FOR CRIMINAL PROSECUTION.....</b>	<b>11</b>

## **ANNEXURES**

<b>ANNEXURE 1 – RISK ANALYSIS .....</b>	<b>12</b>
---	-----------

## 1. THE GUIDELINE

- 1.1. This guideline is issued by the Chief Inspector of Mines (CIoM) in terms of Section 49 (6) of the Mine Health and Safety Act, 1996 (Act 29 of 1996), as amended (MHSA) (the guideline refers to the sections of the MHSA unless otherwise indicated).
- 1.2. This guideline does not supersede the MHSA.
- 1.3. This guideline is the revised Administrative Fine Guideline that was issued by the CIoM in June 1998. The MHSA, 1996 (Act 29 of 1996) was amended by MHSA, 2008 (Act 74 of 2008), so as to review and strengthen enforcement provisions, to simplify the administrative system for the issuing of fines and to reinforce offences and penalties, and hence the review of the Administrative Fine Guideline.

## 2. PURPOSE OF THE GUIDELINE

- 2.1. The purpose of this guideline is to provide guidance to the:-
  - 2.1.1 Mine Health and Safety Inspectorate when exercising its powers in terms of section 55A in making written recommendations to the Principal Inspector of Mines (PIoM) concerning the imposition of an administrative fine.
  - 2.1.2 PIoM when imposing an administrative fine in terms of section 55B; and
  - 2.1.3 PIoM regarding the referral of the matter to the Director of Public prosecution for a decision as to whether the employer should be charged with an offence.

## 3. PRINCIPLES OF ENFORCEMENT

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

- 3.1. **Objective:** Enforcement action must achieve clear outcomes and be based on reliable evidence and considered decision;
- 3.2. **Proportionality and responsiveness:** Enforcement action must be appropriate, responsive and timely. The level of action taken must commensurate with the risk and potential impact;
- 3.3. **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;



- 3.4. **Consistency, impartiality and non-discriminatory.** Enforcement action must be fair, impartial, consistent and equitable, taking into account the attitude towards health and safety actions of the alleged offender and any history of previous incidents and breaches of the MHSA. Enforcement actions should result in similar outcomes in similar circumstances;
- 3.5. **Targeting.** Regulatory measures must be directed primarily at those whose activities generate considerable risk and/or serious harm to health and safety;
- 3.6. **Due process:** The principles of administrative justice must be observed and enforcement carried out within the powers and processes of the legislation;
- 3.7. **Accountability.** The MHSI is accountable to Government and the public at large (including employers and employees) for its actions; and
- 3.8. **Policy compatibility.** Enforcement must be compatible with and carried out within, other government policies and statutory requirements.

#### 4. TERMINOLOGY

All terms and definitions contained in this document bear similar definitions as contained in section 102 of the MHSA.

#### 5. THE ADMINISTRATIVE FINE

- 5.1. Administrative fine means a fine as contemplated in the MHSA; and
  - 5.1.1 introduces the financial penalty which may be imposed upon the employers for contravention of the provisions of the MHSA.
  - 5.1.2 forms part of a comprehensive enforcement strategy by the Mine Health and Safety Inspectorate (MHSI).
  - 5.1.3 envisage improving health and safety in the mining sector by ensuring that employers comply with the MHSA.
- 5.2. Any employer is liable to a fine in terms of Section 55B if the employer contravenes, or fails to comply with any provision of the MHSA; regulation; or condition, suspension, notice, order, instruction, prohibition, authorization, permission, consent, exemption, certificate or document determined, given, issued, promulgated or granted by or under the MHSA by the *Minister, CloM, Inspector*, any person authorized in terms of section 49(4) or any person to whom any power has been delegated or the performance of any duty has been assigned in terms of section 96.

## **6. RECOMMENDATION TO IMPOSE A FINE**

- 6.1. In terms of section 55A (1) an Inspector may make a written recommendation to the PloM that an administrative fine be imposed on an employer who has failed to comply with any provision contemplated in section 91(1B).
- 6.2. An Inspector may consider it appropriate to issue an instruction in terms of section 54 or 55 and at the same time recommend an administrative fine.
- 6.3. The following factors must be considered when recommending an administrative fine:-
  - 6.3.1 level of risk to which employees are exposed (the risk of harm from the contravention/Magnitude and potential consequences of a contravention); and / or
  - 6.3.2 steps taken by the employer to eliminate, control, minimize the risk posed by any hazard; and / or
  - 6.3.3 training and supervision of any employees associated with the non-compliance; and / or
  - 6.3.4 the employer's health and safety risk profile. This refers to the employer's record of the Occupational Exposure Limits, fatal and other reportable occupational accidents and diseases (Incident history); and / or
  - 6.3.5 the employer's compliance record. This refers to the record of the employer's compliance with the MHSA, regulations, guidelines, codes of practice, instructions by the inspectors, and any other source of health and safety standards (General levels of compliance/Previous history of non-compliance/Type of instructions or obligation being contravened); and / or
  - 6.3.6 general neglect, complacency or willful non-compliance by the employer.
- 6.4. The inspector recommending an administrative fine must complete a form DMR 198.
- 6.5. The completed form DMR 198 must be submitted to the PloM and a copy thereof must be forwarded to the parties contemplated in section 55A (3).

## **7. CONSIDERATION OF THE RECOMMENDATION TO IMPOSE A FINE**

- 7.1 The PloM must consider every recommendation to impose an administrative fine.
- 7.2 Before making a decision on the recommended administrative fine, the PloM must give the employer a period of 30 days to make a written representation to the PloM.
- 7.3 In making the decision whether to impose a fine or disregard the recommendation, the PloM must consider the recommendation of the Inspector and the written representation of the employer, if submitted within the stipulated period.
- 7.4 The PloM may after considering a recommendation to impose an administrative fine and any representations made in accordance with section 55A:-

7.4.1 disregard the recommendation; or

7.4.2 impose a fine not exceeding the maximum amount as contemplated in Table 2 of Schedule 8 of the MHSA.

7.5 The PloM must after making any decision notify all the parties contemplated in section 55B (2) on the form DMR 199.

7.6 Should the PloM decide to refer the matter to the DPP for criminal prosecution, the PloM must complete the form DMR 200 and notify all the parties contemplated in section 55B (2).

## **8. IMPOSITION OF ADMINISTRATIVE FINES**

8.1. A risk analysis attached as Annexure 1 must be used as a guide to determine the quantum of an administrative fine that can be imposed on the employer who has failed to comply with any provision contemplated in section 91(1B) of the MHSA.

## **9. PAYMENT OF ADMINISTRATIVE FINES**

9.1. The employer must pay the administrative fine imposed in terms of section 55B within 30 days of the imposition of the fine.

9.2. The method of payment has been stipulated on the form DMR 199.

9.3. After making such a payment, the employer must submit a copy of the bank deposit slip to the DMR regional office as a proof of payment.

9.4. After the employer has submitted the copy of the bank deposit slip, the DMR regional office must issue a letter confirming receipt of the copy of the bank deposit slip to the employer.

9.5. If the employer fails to pay the fine within the 30 days as specified in terms of section 55B(3), the:-

(a) PloM must inform the CloM of the nonpayment of the fine by the employer; and

(b) CloM may in terms of section 55B(4) apply to the *Labour Court* for the fine to be made an order of that court.

## **10. MAXIMUM FINES**

The maximum fine that can be imposed per contravention in terms of section 55B may not exceed an amount provided for in Table 2 of Schedule 8 of the MHSA.



## mineral resources

Department:  
Mineral Resources  
REPUBLIC OF SOUTH AFRICA

The Principal Inspector of Mines

Ref : .....

Region: .....

Date : .....

### RECOMMENDATION TO IMPOSE AN ADMINISTRATIVE FINE IN TERMS OF SECTION 55A (1) OF THE MINE HEALTH AND SAFETY ACT, 1996 (ACT 29 OF 1996), AS AMENDED

I recommend that a fine be imposed on ....., the employer at .....  
(Name of the employer) (Name of the mine)  
, who has contravened or failed to comply with the provisions as contemplated in section 91 (1B) of the Mine Health and Safety Act, 1996 (Act 29 of 1996), as amended:

#### Count 1

On or upon....., at....., at .....  
(Date violation observed) (Time violation committed) (Place violation observed)  
, the said employer at the said mine failed to comply with .....  
[Name and state the provision of section 91(1B)]  
.....  
contravened]  
.....

#### \*Count 2

.....  
.....  
.....

#### \*Count 3

.....  
.....  
.....



**\*Count 4**

.....  
.....  
.....

**\*Count 5**

.....  
.....  
.....

**Description of article, substance, machinery or documentation affected by violation:**

.....  
.....

**Article, substance, machinery or documents copied or seized as evidence of violation:**

.....  
.....

**Statements taken from the following persons as evidence of violation:**

.....  
.....

**Reasons for recommendation:**

.....  
.....

.....  
**(NAME)**  
**INSPECTOR OF MINES**

.....  
**DATE**

***DISTRIBUTION LIST:***

- i. Employer*
- ii. Health and Safety Committee or Health and Safety Representative;*
- iii. Representative Trade Union or Registered Trade Union with members at the mine*

**\*Note:** Delete if not applicable



## mineral resources

Department:  
Mineral Resources  
REPUBLIC OF SOUTH AFRICA

The Employer

Ref : .....

Region: .....

Date : .....

### IMPOSE OR DISREGARD AN ADMINISTRATIVE FINE

In terms of section 55B(1) of the Mine Health and Safety Act, 1996(Act 29 of 1996) as amended, after considering the recommendation of the Inspector of Mines on form DMR 198, Reference ..... of ....., \*and representations in terms of section 55A (4), I have decided to –

#### Count 1

☐ impose an administrative fine of R.....(amount in words) and you are hereby instructed to pay the fine into the following banking details:

#### \*Count 2

☐ impose an administrative fine of R.....(amount in words) and you are hereby instructed to pay the fine into the following banking details:

#### \*Count 3

☐ impose an administrative fine of R.....(amount in words) and you are hereby instructed to pay the fine into the following banking details:

#### \*Count 4

☐ impose an administrative fine of R.....(amount in words) and you are hereby instructed to pay the fine into the following banking details:

#### \*Count 5

☐ impose an administrative fine of R.....(amount in words) and you are hereby instructed to pay the fine into the following banking details:

**Name of Bank:** ABSA  
**Name of Account Holder:** MHS Admin Fines  
**Account No:** 4047867675  
**Branch Code:** 632005

☐ disregard the recommendation to impose an administrative fine.

The reasons for the decision to impose / disregard an Administrative Fine will be provided upon request

.....  
(NAME)  
PRINCIPAL INSPECTOR OF MINES

.....  
DATE

**DISTRIBUTION LIST:**

- i. Employer
- ii. Health and Safety Committee or Health and Safety Representative;
- iii. Representative Trade Union or Registered Trade Union with members at the mine

**EXTRACT FROM THE MINE HEALTH AND SAFETY ACT, 1996 (ACT 29 OF 1996)**

Section 55B(4) If the employer fails to pay the fine within 30 days of the imposition of the fine, the *Chief Inspector of Mines* may apply to the *Labour Court* for the fine to be made an order of that Court.

**\*Notes:** Delete if not applicable



## mineral resources

Department:  
Mineral Resources  
REPUBLIC OF SOUTH AFRICA

Region:

The Employer

Ref :

Postal address

Date :

### REFERRAL FOR CRIMINAL PROSECUTION

You are hereby notified in terms of section 55B (2) that in terms of section 55B (1) (c); I have referred the matter that forms the subject of the recommendation to impose an administrative fine, Reference .....of ..... to the Director of Public Prosecutions, ..... for  
(District)  
criminal prosecution.

.....  
(NAME)

PRINCIPAL INSPECTOR OF MINES

.....  
DATE

#### DISTRIBUTION LIST:

- i. Employer
- ii. Health and Safety Committee or Health and Safety Representative;
- iii. Representative Trade Union or Registered Trade Union with members at the mine



## Annexure 1

RISK ANALYSIS						
Factors to consider as a guide to impose a fine	Rating	Score				
		Count 1	Count 2	Count 3	Count 4	Count 5
1. Does the transgression endangers or may endanger health or safety of persons?	No = 0 Yes = 5					
2. Any similar or <u>related</u> transgression detected within the past 3 years?	No = 0 Yes = 3					
3. How many injury accidents <u>related</u> to this transgression were reported within the past 3 years?	None = 0 ≥ 1 = 3					
4. How many fatal accidents <u>related</u> to this transgression were reported within the past 3 years?	None = 0 ≥1 = 5					
Overall score						

OVERALL OUTCOME OF THE RISK ANALYSIS			
The Principal Inspector imposes an administrative fine			The Principal Inspector may impose an administrative fine or refer the matter to the Prosecution Authority
Overall score ≤ 5	8 ≤ Overall score ≤ 10	Overall score = 11	13 ≤ Overall score ≤ 16
Low	Medium	High	

ADMINISTRATIVE FINE FEE SCHEDULE			
ADMINISTRATIVE FINES THAT CAN BE IMPOSED IN TERMS OF SECTION 55B			
Section under which a fine is issued as contemplated in 91(1B) of the Mine Health and Safety Act, 1996 (Act 29 of 1996), as amended	Low Risk (R'000)	Medium Risk (R'000)	High Risk (R'000)
Any employer is liable to a fine in terms of Section 55B if the employer contravenes, or fails to comply with any (a) provision of the MHSA; (b) regulation; or (c) condition, suspension, notice, order, instruction, prohibition, authorization, permission, consent, exemption, certificate or document determined, given, issued, promulgated or granted by or under the MHSA by the Minister, Chief Inspector of Mines, Inspector, any person authorized in terms of section 49(4) or any person to whom any power has been delegated or the performance of any duty has been assigned in terms of section 96.	fine ≤ R250	R251 ≤ fine ≤ R500	R501 ≤ fine ≤ R1 000