

COMPLIANCE AND ENFORCEMENT

Gaekwad Ramoutar
Chief Inspector
Occupational Safety and Health Agency
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Overview

- History
- Scope of the OSH Act
- Core Functions of the OSH Agency
- Enforcement Policy
- Enforcement approaches
- Making Enforcement Decisions
- Refusal to work



History

- Introduction of H&S legislation in T&T 1948
- Factories Ordinance revised 1950
- OSH Act was passed in 2004
- OSH Act 2004 was amended and enacted in 2006
- OSH Agency formed on August 17, 2007 and Factories Ordinance repealed



Scope of the OSH Act

- The OSH Act seeks to develop a modern framework of OSH standards for worker protection from occupational injury and ill health and disease arising out of or in connection with work in an industrial establishment.
- It develops a system of law that promotes compliance but is also strong in enforcement



Policy Objectives of the OSH Act

- Law that is transparent and clearly identifies responsibilities, duties, enforcement and compliance mechanisms.
- A dynamic system of monitoring to ensure that emphasis is placed on prevention.
- Law that promotes voluntary compliance but is strong on enforcement.
- Stakeholder collaboration to ensure belief and knowledge that safe and healthy systems of work mean benefits to industry and the economy.



Duties and Responsibilities

- The OSH Act places specific responsibilities/duties on:
 - Occupiers
 - Employers
 - Employees
 - Self employed
 - Designers, Manufacturers and Suppliers

Enforcement

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Core Functions of The OSH Agency

- **Regulatory** – targeted compliance programmes
- **Investigative** – accidents, complaints
- **Preventative**- Interventions to ensure deficiencies are corrected before accidents occur
- **Advisory**- advise various stakeholders upon request on Safety and Health matters
- **Information**-Promotion, awareness and sensitization of the importance of industry standards and best practices in accident prevention

Enforcement Policy

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Guiding Principles of Enforcement Policy

- Enforcement action should be proportional to the health and safety risks and the seriousness of the breach.
- Requires inspectors to adopt a risk based approach to enforcement which is the basis of ensuring compliance to the OSH Act.



Guiding Principles of Enforcement Policy

Based on the principles :

- Proportionality – in applying the law and relating enforcement action to risk
- Consistency – of approach
- Targeting – of enforcement action
- Transparency – as to OSH Agency’s operations and
- Accountability – as to its operations, decisions and actions.

Enforcement Approaches



Objectives:

- Increased levels of compliance of industrial establishments.
- Promoting a preventative approach to compliance enforcement through the adoption of Voluntary Standards, Best Practices provision of information, education and stakeholder awareness.
- Reduced numbers of critical and fatal accidents.
- The issuance of enforcement notices to IEs and prosecution of duty holders where warranted.



Enforcement Approaches

A range of enforcement approaches :

- Targeted regulatory Compliance programmes based on risk profiling and risk rating
- Investigation of accidents and complaints
- Investigation of refusal to work
- Provision of information and advice



Enforcement Procedures

In carrying out its enforcement role, the Authority/Agency follow these internal operational procedures:

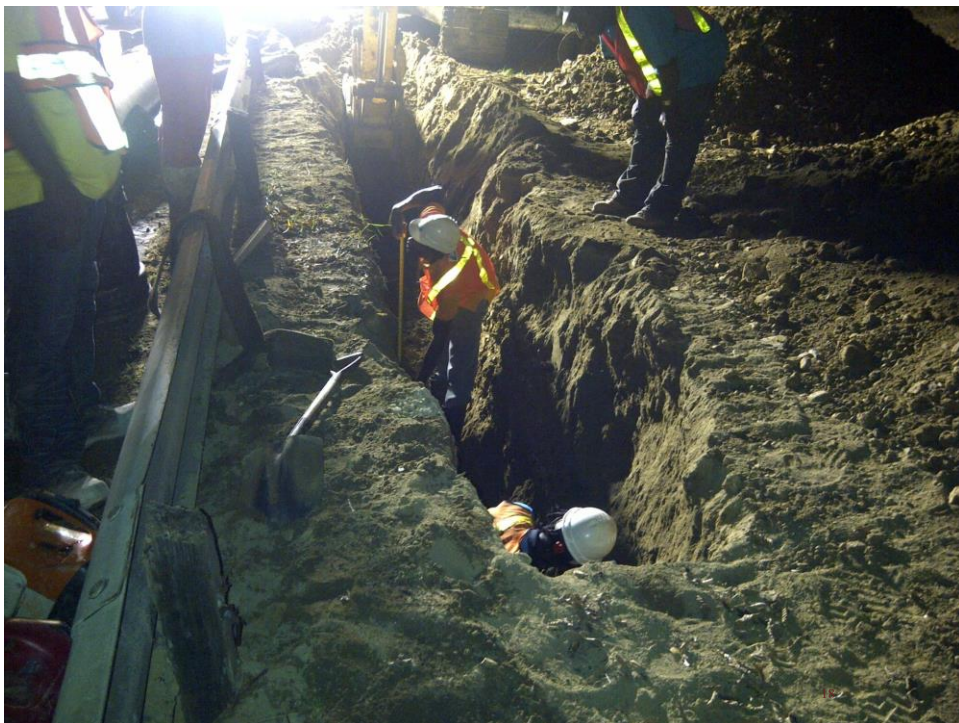
- Inspection
- Investigation of accidents and complaints
- Investigation of refusal to work
- Enforcement Decision
- Issuance of Enforcement Notices
- Prosecution

Making Enforcement Decisions



Making Enforcement Decisions

- Priority to existing risk over non compliance to the legislation.
- Proportionality and the seriousness of the breach of the Act.









ALARP

- The concept of “reasonably practicable” is a key part of the general duties of the OSH Act
- ALARP describes the level to which we expect to see workplace risks controlled.
- Weighing a risk against the trouble, time and money needed to control it.



REASONABLY PRACTICABLE



COST

In time, money, trouble...
etc

RISK

Of injuries, death



ALARP

- A duty holder has to show through reasoned and supported arguments that there is nothing else that could reasonably be done to reduce risks further.
- **Inspectors** will have to decide whether duty-holders have reduced their risks ALARP and so have complied with the provisions of the OSH Act.



Factors Inspectors will take into consideration in making enforcement decisions

- The level of actual risk/harm. Is actual risk unacceptable?
- Seriousness of any potential breach of the OSH Act; requiring enforcement notice or prosecution
- The Inspection history of the duty holder.
- Relevant incident history.
- The standards for compliance or administrative arrangements complied with by the duty holder.
- The duty holder history of enforcement being taken against them
- The standard of general conditions.
- The public interest.



Issuance of Enforcement Notices

- Improvement notices are issued usually on re-inspections where the duty holder has failed to comply with the recommendations for corrective action and/or comply with breach(es) cited.
- Prohibition notices are issued when the inspector determines that there are serious breaches of the Act and that there is imminent danger as a result of unacceptable workplace risk .



Prosecution

- It is the policy/mandate of the Agency to seek the prosecution of duty holders guilty of breaching the Act especially where fatalities and critical injuries occur or failure to comply with enforcement notices.
- Prosecution may be used without prior warning.
- The decision whether or not to prosecute takes into account the evidential test.



Matters that will be Considered

- Death resulting from a breach of the OSH Act.
- Gravity of an alleged offence, taken together with the seriousness of any action or potential consequence.
- Reckless disregard for health and safety requirements.
- Instances of non-compliance which give rise to unacceptable risk, or persistent poor compliance.
- Work carried out without or in serious non-compliance with appropriate approvals.



The OSH Act Binds the State

- All industrial establishments are subject to regulation under the Occupational Safety and Health Act Chapter 88:08
- Section 5 (2) industrial establishments belonging to or occupied by the state except in cases of public emergency.
- 5 (4) of the Act states that "This Act binds the state"

Refusal to Work



Is this refusal legitimate?

- What are the reasons for refusal?
- Was the right procedure followed?
- Is there serious and imminent danger?
- Was the refusal investigated?
- Is there sufficient evidence?
- Does The Osh Agency support the reasons?



Can Anyone Refuse Unsafe work?

Yes, UNLESS

- A circumstance in S15 is inherent or a normal condition of employee's work or

- A refusal would directly endanger the life, safety or health of another person



What are the grounds for a refusal to work?

- a) There is **serious and imminent** danger to himself or others
- b) Any machine, plant, device or thing he is to use or operate is likely to endanger himself or another employee
- c) The physical condition of the workplace is likely to endanger himself
- d) Any machine, plant, device or thing he is to use or operate or the physical condition of the workplace in which he works is in contravention of this Act or the Regulations made under it.
- e) **Contravention likely to endanger himself or another employee.**



What is “sufficient reason”?

- Reasons for refusal to work must be based on verifiable information
- There must be evidence to support a claim of a threat of serious or imminent danger
- Evidence must be factual rather than speculative



What is the Right Procedure?

- The employee must have “sufficient reason”
- Is the employee identified under S14(2)?
- Is the danger serious and imminent?

Imminent Danger

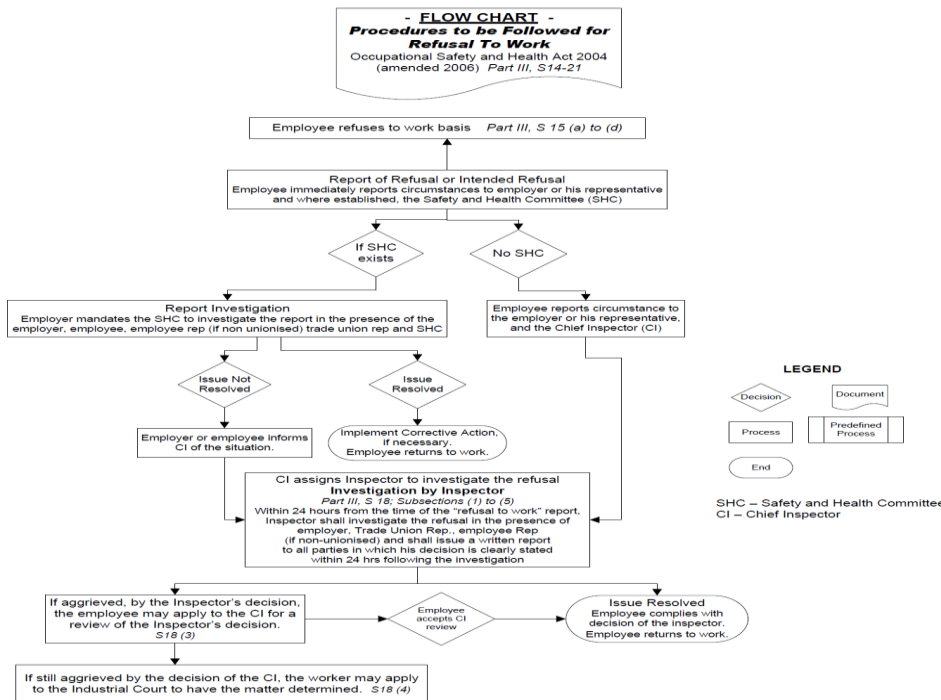
“.....any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.”

US OSH Act of 1970



Absence of SH Committee

- Process is triggered by S 15.
- SH committee will verify internally through an investigation whether there is sufficient reason or not.
- The absence of SH committee apart from being a breach means that there will be no verification of sufficient reason.
- The effect is that no internal investigation occurs, employees leave the workplace .
- Result in the process being compromised.
- Under S 18 The OSH Agency will be informed .
- An inspector will be assigned to investigate.





THANK YOU