


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

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

FORMS

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

ANNEXURES

| | |
|---------------------------------|----|
| ANNEXURE 1 – RISK ANALYSIS..... | 12 |
|---------------------------------|----|

1. THE GUIDELINE

- 1.1. This guideline is issued by the Chief Inspector of Mines (CloM) 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 CloM 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 (PloM) concerning the imposition of an administrative fine.
 - 2.1.2 PloM when imposing an administrative fine in terms of section 55B; and
 - 2.1.3 PloM 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, Referenceof 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 <i>Minister, Chief Inspector of Mines, Inspector</i> , 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 |