

# Occupational Health and Safety Program

Follow-up to VFM Section 3.10, *2004 Annual Report*

## Background

The Ministry's Occupational Health and Safety Program (Program) sets, communicates, and enforces laws to reduce or eliminate workplace fatality, injury, and illness. The *Occupational Health and Safety Act* and related regulations set out the rights and duties of all parties in the workplace and provide for enforcement of the law where compliance has not been voluntarily achieved. The Ministry estimated that about 300,000 workplaces and 4.6 million workers were covered by the Act.

In the 2005/06 fiscal year, expenditures for the Program totalled approximately \$69.3 million (\$52 million in 2003/04), of which approximately 72% was for salaries and benefits. As of March 31, 2006, the Ministry had about 360 inspectors (230 inspectors in 2003/04) and planned to increase that to 430 inspectors by the end of 2006/07. The Ministry has a Memorandum of Understanding with the Workplace Safety and Insurance Board (WSIB) that calls for the WSIB to assume the full costs associated with administering the Act.

In our *2004 Annual Report*, we concluded that the Ministry's systems and procedures for enforcing occupational health and safety legislation had improved in some areas since our previous audit

in 1996. However, we identified a number of areas where improvements were required for the Ministry to be fully effective in fulfilling its key mandate of reducing workplace injuries and illnesses. For instance:

- The Ministry's inventory of workplaces that are potential candidates for inspection was incomplete. For example, in December 2003, a 45-day inspection blitz of construction projects in the greater Toronto area identified more than 90 large workplaces that had not been registered with the Ministry as required.
- The number of compliance orders that inspectors issued for contraventions observed during an inspection ranged from fewer than 100 to more than 500 per inspector per year. The Ministry had not investigated the reasons for such large variances to ensure that inspections and the issuing of orders were being done consistently throughout the province.
- Although the Ministry's information system indicated that corrective action had been taken for more than 90% of safety contravention orders issued, we found that 30% of the related files had no evidence of remedial action being taken or of any reinspection being conducted.

- We noted many cases where prosecutions were not used to deter repeat violators or those with serious safety violations. In this regard, when the Ministry used a zero-tolerance approach that required inspectors to prosecute employers for high-risk safety violations, inspectors issued nearly 50% more tickets and summonses during a 45-day blitz of construction projects in the greater Toronto area than they had issued during the entire previous year for all construction projects across Ontario.

We made a number of recommendations for improvement and received commitments from the Ministry that it would take action to address our concerns.

## Current Status of Recommendations

Based on information obtained from the Ministry of Labour, the Ministry has made progress on all of the recommendations we made in our *2004 Annual Report*, with significant progress being made on several, such as conducting the required inspections of high-risk workplaces and issuing more contravention orders—due in large part to the increased number of inspectors and better monitoring by management of inspectors' activities. The current status of action taken on each of our recommendations is as follows.

### ENFORCING THE ACT AND REGULATIONS

#### Identifying Workplaces for Inspection

##### Recommendation

*To help ensure that all workplaces are identified for possible inspection, the Ministry should:*

- *consider adopting the practices of some districts, such as using municipal building permits to*

*identify unregistered workplaces, on a province-wide basis;*

- *develop ways to maintain a more complete inventory of workplaces that are candidates for inspection, including, where possible, establishing formal arrangements with other organizations to obtain information useful to inspectors for planning their inspections; and*
- *enhance monitoring practices to ensure that construction contractors submit Notices of Project as required and that the required information about subcontractors working on the project is provided.*

##### Current Status

The Ministry stated that, since spring 2004, it had been meeting with the Ministry of Municipal Affairs and Housing and municipal representatives to discuss opportunities for sharing building-permits information to help identify unregistered and high-risk workplaces. One initiative being considered was allowing construction companies to apply electronically through a “one-window” method for all needed permits, including building permits. Such an approach would help ministries and municipalities to share information easily. However, at the time of our follow-up, the implementation of this initiative was delayed because several issues were unresolved, such as legal issues over the sharing of building permit information and the challenge of municipalities having IT systems that were not entirely compatible with each other.

At the time of our follow-up, the Ministry indicated that the passage of a new piece of legislation, the *Regulatory Modernization Act*, would better enable staff from 13 ministries and agencies (including the Ministry of Labour) to work together and share detailed compliance information. The Act received its first reading in June 2006.

In addition, to help ensure all workplaces were identified for possible inspection, we were informed that the Ministry implemented a data- and information-sharing agreement with the Workplace

Safety and Insurance Board (WSIB) in spring 2004. The WSIB is providing the Ministry with a new registration list on a quarterly basis. The Ministry is using this information to help target its enforcement activities and identify more unregistered workplaces. As a result, the number of registered organizations had increased significantly, from approximately 13,400 in 2003/04 to 28,200 in 2005/06.

With respect to ensuring that construction contractors submit Notices of Project as required, the Ministry advised us that it had re-enforced its zero-tolerance approach, particularly in the construction sector. The Ministry reported that the number of orders issued for failing to submit a Notice of Project had increased significantly as a result (from 1,394 in 2003/04 to 1,788 in 2005/06), as had those issued for failing to register as an employer (from 1,167 in 2003/04 to 2,365 in 2005/06).

## Prioritizing Inspections

### Recommendation

*To help ensure that high-risk employers are inspected, the Ministry should:*

- *establish a more formal process for monitoring whether the required inspections of high-risk workplaces are being carried out; and*
- *assess the need for allocating a portion of inspector resources for targeting inspections during evenings and weekends.*

### Current Status

As of March 31, 2006, the Ministry had hired and trained an additional 131 inspectors since 2003/04 to ensure the required inspections of high-risk workplaces are carried out. The Ministry informed us that it was in the process of hiring an additional 69 inspectors, whom it expected to be in the field by January 2007. In order to increase effective oversight of these inspections and improve overall quality assurance, the Ministry reported that it had implemented a number of processes, including the establishment of a Divisional Diagnostic Unit to

develop a targeted enforcement strategy; dedicated regional support to inspectors; dedicated regional management of high-risk inspection activities; and, jointly with the WSIB, establishment of reporting and data-analysis processes that include formal quarterly tracking and reporting on the targeted inspections of high-risk workplaces.

The Ministry also reported that, to ensure program results are clearly understood and achieved, performance expectations had been documented in annual performance plans of inspectors, regional support staff, and managers.

With respect to allocating inspector resources for targeting inspections during evenings and weekends, the Ministry indicated that all 131 new inspectors had extended hours as part of their work agreement. It informed us that it was negotiating with the Ontario Public Service Employees Union to implement a similar formalized work arrangement for all inspectors in the 2006/07 fiscal year.

At the time of our follow-up, the Ministry's information system did not specifically track which inspections were conducted during the evenings. The Ministry indicated it was in the process of making changes to its information system to permit such tracking.

## Advancing the Internal Responsibility System

### Recommendation

*To help enhance workplace safety, the Ministry should require that its inspectors address whether an effective internal responsibility system is in place at each workplace inspected or investigated, and whether it appears to be operating effectively.*

### Current Status

In February 2005, the Director of the Program issued a directive reminding all ministry staff that ministry policy and procedures require that inspectors promote the internal responsibility system (IRS), including the requirement to have joint

health and safety committees with both management and worker representatives, hold the parties accountable through the issuance of appropriate orders, and include a summary of their discussions and interactions in the inspection report. The directive explicitly instructed inspectors to record their IRS findings in their reports.

In addition, the Ministry advised us that it had developed and delivered IRS training to all new inspectors. At the time of our follow-up, training to remaining staff was expected to be completed by June 2006. The *Policies and Procedures Manual* had been updated to reflect the information contained in the training modules and the directive issued by the Director. As well, criteria had been established in the manual to provide guidance on how an organization could be taken off the high-risk list due to a well-operating IRS.

According to the Ministry, inspectors issued approximately 12,000 orders pertaining to the IRS in the 2005/06 fiscal year, compared to 6,305 orders in 2004/05.

## Issuing and Monitoring Compliance with Orders

### Recommendation

*To help ensure that contraventions are consistently dealt with and that corrective action is taken on identified health and safety hazards, the Ministry should monitor inspectors' activities to make sure that:*

- *orders are issued for all health and safety contraventions, as required by ministry policy; and*
- *orders are cancelled only after the inspector has received sufficient confirmation that the unsafe workplace practice has been rectified.*

### Current Status

In October 2004, the Ministry engaged a consultant to undertake a comprehensive review of the existing Quality Assurance/Quality Control program. The consultant made a number of recommendations for monitoring field activities to ensure existing

procedures were being followed. According to the Ministry, the consultant's recommendations were implemented via new processes and systems, which included ongoing monitoring of inspection data and orders issued, auditing of inspection files—including the writing and cancellation of orders—and tabling of quality-assurance reports to management on a quarterly basis.

In addition, the Ministry confirmed that managers had been instructed to actively monitor field activities and randomly accompany inspectors to observe and ensure inspections and investigations were performed according to the *Occupational Health and Safety Act*. At the time of our follow-up, all managers had quality assurance/control targets in their performance agreements.

The Ministry advised us that the requirement to issue orders for all contraventions and monitor outstanding orders is regularly re-affirmed with inspectors by managers and regional program coordinators. New reports have also been created to give managers and regional program co-ordinators the tools to ensure regular monitoring of outstanding orders. As a result, the number of orders issued had more than doubled since the 2003/04 fiscal year, to almost 159,000 from 78,000. The number of inspections in which inspectors follow up on orders issued (required where no response is received from the employer by the compliance date to provide proof that the contravention has been corrected) had increased by 23%, from 9,398 in the 2003/04 fiscal year to 11,515 in 2005/06.

## Prosecuting Violators

### Recommendation

*To help ensure that the Ministry's enforcement efforts are both timely and effective in achieving compliance and in deterring future violations, the Ministry should:*

- *take more aggressive action to prosecute violators who fail to comply with ministry orders or*

who are repeatedly found to have unsafe workplace practices; and

- consider introducing more expeditious and effective enforcement tools, including scheduled offences for the industrial and mining sectors and administrative monetary penalties for violations that do not warrant criminal prosecution.

### Current Status

The Ministry informed us that it had revised its prosecution policy to re-enforce and strengthen the zero-tolerance approach for employers that are non-compliant.

With respect to introducing more expeditious and effective enforcement tools, the Ministry confirmed that, effective January 15, 2005, a regulation was made under the *Occupational Health and Safety Act* that prescribed two new schedules for the issuance of Part I tickets with set fine amounts for 81 contraventions of the *Regulation for Industrial Establishments*. The schedules focus on contraventions that pose an immediate and potential serious hazard to a worker.

According to the Ministry, the policy of issuing Part I tickets in the mining sector was also reviewed, including the set fine schedule of offences for mining regulations. To bring the fine limits in line with those of the industrial and construction sectors, the Ministry plans, in consultation with the Ministry of the Attorney General, to bring forward a proposal in early 2007 as part of a package to amend the mining regulations.

The Ministry indicated that, at the time of our follow-up, it was not considering administrative monetary penalties because the above tools were seen to be more effective.

## Monitoring Enforcement Efforts

### Recommendation

*To strengthen support for enforcement efforts aimed at reducing workplace injuries and illnesses, the Ministry should:*

- review and improve its systems and procedures for measuring and monitoring the deployment of staff resources on enforcement activities to ensure the allocation of staff is based on relative workload and risk;
- improve its reporting of inspection results to ensure that important documents are kept, that the information is complete and accurate, and that the quality of inspections complies with ministry policies and procedures;
- build on its quality assurance initiative by taking action to ensure that it is effective and consistent between regions and that concerns and best practices noted are appropriately communicated to staff and management; and
- consider implementing periodic rotation of inspectors to different geographic areas.

### Current Status

The Ministry advised us that, in 2004, it developed methodologies and procedures to focus inspection resources on high-risk workplaces based on the severity of the injury and the number of injuries. Regions were restructured in order to address workload levels, and a new management structure was implemented to ensure consistency in the quality of inspections and inspection reports, as well as completeness of files. In addition, a Divisional Diagnostic Unit was established to track the trends of workplace injuries and, with the Workplace Safety and Insurance Board, to recommend best practices for addressing high-risk hazards and workplaces. Best practices had been documented and communicated to staff and management at the time of our follow-up.

The Ministry also advised us that it had provided training to inspectors to help improve the quality of reports being produced and developed Quality Assurance Audit Templates in accordance with its policies and procedures to ensure that the quality-assurance initiative is effective and consistent among regions. Operations Division managers are required through performance contracts to carry out regular,

ongoing quality-assurance reviews. Regional program co-ordinators support and contribute to these reviews by using the templates to bring forward key quality-assurance concerns for review and remedial action with respect to the inspector involved. When the review suggests a possible broader implication, the issues are brought forward by managers to their directors and, where appropriate, to senior management of the Ministry.

The Ministry had not designed a system of rotating inspectors through different work units. The Ministry informed us that fiscal constraints, collective agreements, and staff-relations issues make rotation of staff problematic. In some regions, geographic issues may also make rotation difficult and costly.

## MEASURING AND REPORTING ON PROGRAM EFFECTIVENESS

### Recommendation

*To help ensure the accountability of the Occupational Health and Safety Program and to assist the Legislature in making decisions affecting program direction and resource allocation, the Ministry should develop, in accordance with appropriate performance-reporting principles, more comprehensive indicators*

*for measuring and publicly reporting on the Program's effectiveness.*

### Current Status

The Ministry advised us that more comprehensive and challenging program-outcome targets were developed in conjunction with the Workplace Safety and Insurance Board (WSIB). These include a commitment to a 20% reduction in lost-time injury rate from 2.2 per 100 workers in 2003 to 1.8 by the 2007/08 fiscal year, and 20,000 fewer lost-time injuries annually by 2007/08. We were informed that processes were also established with the WSIB to collaboratively report on annual performance targets, including key public messaging. The Ministry further informed us that it was tracking enforcement activities specifically related to the high-risk initiatives it had implemented.

According to the Ministry, the Divisional Diagnostic Unit has been producing weekly, monthly, and quarterly reports on performance measures and outcomes. Also, since June 28, 2004, statistics for the past 10 years on key activity measures—including the number of workplaces inspected and investigated, total field visits, and orders issued and prosecutions initiated for violations—have been posted on the Ministry's website.