

9.**ENVIRONMENT AND LABOUR -
OCCUPATIONAL HEALTH AND SAFETY****BACKGROUND**

9.1 The Department of Environment and Labour, in accordance with the Occupational Health and Safety Act, is responsible for the promotion, coordination, administration and enforcement of occupational health and safety within the Province of Nova Scotia. The Act applies to all workplaces under Provincial jurisdiction and establishes a system which identifies rights and responsibilities for the various parties to workplace safety.

9.2 The foundation of the Act is the Internal Responsibility System, which is based upon the principle that employers and employees, in addition to any other individuals who can affect the health and safety of persons at the workplace, share responsibility for health and safety. It asserts that each party should assume responsibility for creating and maintaining a safe and healthy workplace to the extent of their authority and ability to do so. The system includes a framework for participation, sharing of information and refusal of unsafe work. The Department's role is to establish and clarify the responsibilities of the various parties under the Act and to intervene appropriately when those responsibilities are not carried out.

9.3 The Department ensures compliance with the Occupational Health and Safety Act primarily through inspection of workplaces and investigation of workplace accidents and complaints. In addition, the Act requires educational instruction to be provided in the principles of occupational health and safety. The Act is not specific about which entities are responsible for providing such training.

9.4 The occupational health and safety activities of the Department are funded, in part, by the Accident Fund of the Workers' Compensation Board, as determined annually by Executive Council. For the year ended March 31, 2001 this amounted to \$3.5 million, representing 82% of the \$4.3 million provided for occupational health and safety. The Occupational Health and Safety Division of the Department employs 62 staff. The organizational structure of the Division is illustrated in Exhibit 9.1 on page 153.

RESULTS IN BRIEF

9.5 The following are our principal observations from this audit.

- The system used to plan and control regulation development is inadequate. The Department has limited resources to dedicate to this function, but does not have formal criteria or a prioritization process to identify areas where the need for new regulatory standards is most urgent. Also, once a decision is made to amend or create new regulations, there are no milestones, time lines or responsibilities established.
- The Department has a broad mandate under the Occupational Health and Safety Act and its associated regulations. As with any Nova Scotia law, this Act applies only to persons and businesses within the Province. However, there are elements of

uncertainty relating to the Act's application to certain work activity conducted offshore of the Province.

- If the Department continues to perform inspections at its current rate, it could take more than ten years to perform an inspection of all businesses in Nova Scotia. Despite this high volume, the Department does not have a rigorous approach to the targeting of higher-risk workplaces for inspection.
- Our examination of inspection files found instances of poor documentation, as well as inadequate follow-up of compliance orders issued. We also concluded that documentation of complaints and related investigations need to be improved.
- The Division needs better procedures to monitor the work activity of Occupational Health and Safety officers.
- The Department's annual report lacks substantive information on the performance of the Occupational Health and Safety Division and does not fulfil its potential as an accountability document.

AUDIT SCOPE

9.6 In July 2001, we completed a broadscope audit of the Occupational Health and Safety Division of the Nova Scotia Department of Environment and Labour under the mandate established by Section 8 of the Auditor General Act. Our audit was performed in accordance with auditing standards established by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

9.7 The objectives of this assignment were to assess the Department's:

- process for developing and promulgating occupational health and safety standards;
- monitoring, inspection and other activities as they relate to the requirements of the Occupational Health and Safety Act and Regulations, as well as Department policy;
- system for enforcing Provincial legislation and regulations;
- processes to ensure the competence of personnel involved in occupational health and safety inspection and enforcement activities; and
- accountability framework with respect to occupational health and safety.

9.8 Audit criteria were developed to assist in our assessment of the systems and practices of the Department. The audit criteria were discussed with and accepted as appropriate by senior management of the Department, and are outlined in Exhibit 9.2. Our audit procedures included review of occupational health and safety legislation and regulations, interviews with management and staff, testing of inspection and investigation files, as well as examination of other documents.

PRINCIPAL FINDINGS

Standards

9.9 *Standards development* - The development of occupational health and safety (OH&S) regulations begins with the identification of a need to develop a standard. The Department considers items such as new industry standards, developing trends within industries, accident statistics and the results of stakeholder consultation. After a new set of regulations or changes to existing regulations are drafted by the Department, they are sent to the Minister's Advisory Council for review.

9.10 The Minister's Advisory Council, in accordance with Section 25 of the Occupational Health and Safety Act, advises the Minister on OH&S issues, including any proposed changes to regulations. The Council is comprised of an equal number of representatives from employers and labour, in addition to government officials. Depending on the complexity of proposed changes, workgroups may be established to review and provide feedback on the appropriateness and functionality of the changes. In certain instances, the public is requested to provide submissions on the proposed revisions. In addition, legislation enacted by the Federal government and other provinces are considered. Before the Council finalizes its recommendations on new or changed regulations, the various stakeholder groups affected are asked to comment on the draft document(s). After consideration of stakeholder submissions and any necessary additional revisions, the Council submits the changes for approval by the Minister and Executive Council. Should the Minister's Advisory Council not reach a consensus, the OH&S Division will review the problem areas and make recommendations to the Deputy Minister for submission to the Minister, and advise the Council of its recommendations.

9.11 In the fall of 2000, Royal Assent was given to Bill 86, which made amendments to the Occupational Health and Safety Act. The Bill, in part, specifies that: "*The Governor in Council shall amend, re-enact or repeal every regulation ever made pursuant to Section 82(1) of the Act no later than five years after the regulation was made or re-enacted or last amended, as the case may be.*" The purpose of this requirement is to ensure OH&S regulations remain current and relevant. Although these amendments will not come into effect until an order is issued by Executive Council, a review of existing regulations has already begun.

9.12 At the time of our audit, the Department was, in addition to reviewing all existing OH&S regulations, preparing six new sets of regulations and revising four existing sets of regulations. Senior management indicated that it can take in excess of ten years for new regulations to be finalized. For example, a 1988 inquiry into a diving fatality, under the Fatal Inquiries Act, recommended that new regulations be prepared to regulate the diving industry. The Department prepared regulations as recommended by the inquiry. However, they are still in draft form due to unresolved concerns raised by industries which would be affected by the regulations. Senior management of the OH&S Division informed us that certain sections of the existing Occupational Health and Safety Act and regulations can be applied to the diving industry. However, this Act does not directly address the specific occupational risks of diving and specific regulations would make interpretation and enforcement less complicated.

9.13 In our view, the system used to plan and control regulation development is inadequate. The Department has limited resources to dedicate to this function, but does not have formal criteria or a prioritization process to identify areas where the need for new regulatory standards is most urgent. Also, once a decision is made to amend or create new regulations there are no milestones, time lines or responsibilities established. A system had been in place to track regulation development, but it was abandoned due to a lack of resources needed to keep it current. It is expected that a reorganization of existing Departmental resources should enable the Department to reestablish control over the development of regulations.

9.14 Stakeholder education - After regulations are approved by Executive Council, the Department undertakes public information sessions to communicate the impact of the new regulations. Advertisements are placed in local newspapers throughout the Province to indicate time and location for an information session. During regular workplace inspections, OH&S officers will provide information on new regulations. The Department publishes various brochures with information on safety practices and the Act. Also, information concerning legislation and regulations is on the Department's web-site, including a reference manual for all new regulations. The manual contains clarifications of certain sections of the regulations based on legal opinions obtained, as well as Department policy on application of the regulations. Additionally, articles on new regulations are published in certain industry trade journals.

9.15 The Act requires that courses be made available on the principles of occupational health and safety. Various courses are offered by the Nova Scotia Community College, Dal Tech, the Nova Scotia Safety Council, the Nova Scotia Construction Safety Association and various private groups; most in cooperation with the Department. These courses cover sections of the Act and OH&S policies. As well, the Department's web-site contains information on courses currently offered by external parties relating to a specific type of OH&S requirement (e.g., first aid training).

Compliance with Legislation

9.16 Legislative jurisdiction - The Department has a broad mandate under the Occupational Health and Safety Act and its associated regulations. As with any Nova Scotia law, this Act applies only to persons and businesses within the Province. However, there are elements of uncertainty relating to the Act's application to certain work activity conducted offshore of the Province. Offshore work includes production and exploratory activity at numerous oil and gas fields, as well as work on fishing, transport, cargo and other vessels in Canadian waters surrounding the Province.

9.17 One area of uncertainty relates to offshore boundaries. The OH&S Act does not specify these boundaries, and thus it is unclear which offshore structures are considered to be in the Province. There is more clarity relating to cargo vessels and ferries, however there is some confusion with respect to fishing vessels.

9.18 There are also some areas where there is a lack of clarity surrounding the respective authorities of the Federal government and the Nova Scotia government for OH&S issues. Some of these relate to fishing by members of First Nations and interprovincial transportation.

9.19 Another element of uncertainty surrounds the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act. This is a piece of legislation which governs the sharing of responsibility and authority between Nova Scotia and the Federal government with respect to oil and gas exploration and production. This Act is acknowledged to have over-riding authority regarding such offshore activities, and provides for OH&S regulations for offshore work. However, no such regulations were ever produced. The Department entered into a memorandum of understanding with the Canada-Nova Scotia Offshore Petroleum Board to administer the Department's perceived responsibilities relating to the offshore. As part of this agreement, a safety officer working for the Canada-Nova Scotia Offshore Petroleum Board is officially an employee of the Nova Scotia Department of Environment and Labour for purposes of enforcement of the OH&S Act, and the Department receives regular reporting from the officer. The Department is working to further resolve the issue, but requires agreement at both the Federal and Provincial level. Also, there is a desire to bring the Province of Newfoundland and Labrador into any agreement on the approach to regulating occupational health and safety in offshore workplaces.

9.20 Compliance with legislation - Senior management is confident the Department is complying with all significant provisions of the Act and regulations. Except for the various uncertainties

relating to jurisdiction described above, our examinations showed no instances where the Department is not complying with key provisions of the Occupational Health and Safety Act and related regulations.

9.21 The OH&S Division has developed a policy and procedure manual. We examined policies and procedures related to the inspection process and found they are either derived from or consistent with the Act and Regulations. Appropriate references are made to the Act and Regulations in the various sections of the manual. Changes to the manual go through an extensive internal review process, which may include review by legal staff. The manual is reviewed and updated on a periodic basis.

9.22 We found the OH&S policy and procedure manual to be comprehensive. However, we recommended that the OH&S Division develop more detailed policies and procedures in a few specific areas: the selection of businesses for inspection; accident investigations; management review of inspection reports and orders issued; and guidelines for when reinspections are to be performed.

9.23 Paragraphs 9.9 and 9.10 of this Chapter describe the process used to make changes to the OH&S Act and Regulations. Once changes have been approved by the Legislature and/or Executive Council, all OH&S Division staff are informed of the changes by correspondence and formal training. The Division's policy and procedure manual is updated to reflect the changes. Staff have ready access to the most recent version of the Act, regulations and policy and procedure manual.

9.24 As described in paragraph 9.2, the responsibility for creating and maintaining a safe and healthy workplace lies with both employers and employees. Through its various activities, the Department informs employers and employees of what is required of them under the OH&S Act and Regulations. Aside from the reporting of accidents, there is no formal reporting specified in the Act or Regulations for OH&S committees or other groups to ensure they are fulfilling their legislated responsibilities. The Department obtains assurance that legislated requirements are being met through its inspection process and the investigation of complaints and accidents.

9.25 *Inspections overview* - The Field Services Section of the OH&S Division is responsible for the delivery of a series of core services. These services include: health and safety inspection; investigation; consultation; mediation; compliance promotion; and enforcement. The services are delivered by occupational health and safety officers who are each assigned to one of 30 geographical territories. Each officer has been assigned a territory estimated to contain approximately 1,000 businesses. Because of the problem in determining the number of businesses in Nova Scotia, as described below in paragraph 9.27, the actual number of businesses assigned to an officer may vary from the standard established.

9.26 *Management information system* - The Department uses a computerized Inspection Tracking System to record the results of some of its activities. The OH&S Division has identified the need to acquire a more integrated management information system. There are a number of deficiencies in the current system.

- The software is not consistent with the operating system used by other Department systems.
- There are limitations to the company and inspection data which can be recorded in the system.
- The system is not designed to report on all company contacts. It focuses primarily on inspections.

- The data in the system is at least one month old at any specific moment, and staff cannot access the data in an on-line environment.
- There is limited specialized reporting capability.

9.27 *Inspection policies* - The Department is unable to determine the number of businesses covered under the Act. The Department's Inspection Tracking System is using 1995 data obtained from the Workers' Compensation Board. This data includes information on approximately 17,000 businesses required to be registered with the Workers' Compensation Board. However, the OH&S Act applies to almost all businesses operating in Nova Scotia, which is not the case with respect to the Workers' Compensation Act. Draft statistical information obtained from the Department of Finance indicates there were approximately 48,000 businesses in Nova Scotia in 1999. The Department of Environment and Labour is currently awaiting approval to proceed with a study to determine the feasibility of accessing the Nova Scotia Business Registry, which is maintained by Service Nova Scotia and Municipal Relations. If the Department obtains access to the Business Registry, it would have a more complete and up-to-date listing of businesses covered under the OH&S Act.

9.28 Exhibit 9.3 on page 155 provides summary statistics on the number of workplace contacts for fiscal years 1995-96 to 2000-01. If the Department continues to perform inspections at the same rate as in 2000-01, it could take more than ten years to perform an inspection of all businesses in Nova Scotia. For the 2000-01 fiscal year, the Department established a standard of 120 workplace contacts (i.e., inspections, reinspections, complaints, work refusals, discriminatory actions and accident investigations) for each officer. Each officer was required to have 60 workplace contacts among the natural resources, manufacturing, retail service and government sectors; inspect every business that had been prosecuted by the Department since April 1, 1998; and perform an inspection of the five businesses in each officer's territory that had the highest accident rate according to the Workers' Compensation Board. However, because of problems in accessing and analyzing data from the Workers' Compensation Board, the Department had difficulty pursuing its goal of inspecting businesses with higher accident rates.

9.29 In our view, the Department does not have a rigorous approach to the targeting of higher-risk workplaces for inspection. There is little support at the Department to indicate that currently targeted industry groups have a higher risk factor with respect to workplace safety. Further, only 5 of 120 business contacts are aimed at businesses with a history of higher accident rates. Also, as indicated above, there is insufficient information to make good risk-based decisions. Therefore, the Department cannot ensure that officers are targeting all high-risk businesses for inspection. We recommended that the Department develop a more formal risk-based inspection system.

9.30 *Performing inspections* - The Department's inspection function serves to monitor and enforce compliance with the OH&S Act and Regulations. Inspections are unannounced. The results of an inspection are documented on an inspection report and compliance orders are issued when there are significant violations of the Act or Regulations. Inspection reports must be signed by the OH&S officer and a representative of the company. Generally, we found inspection reports to be understandable. However, we noted four reports out of 60 examined were not signed by the officer or a company official.

9.31 In the spring of 2000, the Department established a committee to develop checklists which could be used by officers to evaluate compliance with the OH&S Act and Regulations. At the time of our audit, only the checklist for the OH&S Act had been finalized and implemented. Since checklists provide valuable documentary evidence that a workplace is in compliance with key provisions of the Act and Regulations, we recommended the remaining checklists be finalized and implemented as soon as possible.

9.32 Since May 2000, each inspection must include a review of the Internal Responsibility System at a workplace. This review must be documented on the inspection report and supported by the OH&S Act checklist. During our testing of 65 initial and follow-up inspections, we noted:

- seven instances where the review of the Internal Responsibility System was not well documented in the inspection report; and
- seven instances where the checklist for the OH&S Act was not completed.

9.33 If officers observe instances where there is non-compliance with the Act or Regulations, they have an option as to how to proceed. Minor deficiencies can be noted in the inspection report and the company instructed to correct them. Alternatively, officers can issue formal compliance orders when more serious deficiencies are identified.

9.34 During our testing of a sample of 65 initial and follow-up inspections, we noted:

- three instances where additional compliance orders should have been issued; and
- three instances where a general order which covers a number of deficiencies was issued, rather than a separate order for each deficiency.

9.35 We found that all orders were referenced to the applicable sections of the Act and Regulations. Because some orders were not well worded, we recommended that the Department develop standard wording so that deficiencies observed and actions required to achieve compliance are clearly and consistently stated.

9.36 A compliance date is established for all orders issued. Officers are responsible for ensuring orders are complied with by the specified date. This is accomplished by requiring companies to submit documentation describing how they have complied with orders or by a reinspection performed by an OH&S officer. We noted instances where it may have been more appropriate to perform a reinspection rather than requiring companies to submit documentation and we recommended that additional guidance be provided to help officers decide whether a reinspection is warranted.

9.37 We noted that businesses often do not submit documentation as required to support compliance with orders, and when they do it is often minimal. Businesses sometimes only state what they plan to do in order to achieve compliance. During our testing of 60 initial inspections, we found:

- 23 instances where businesses did not submit documentation to confirm compliance with the orders issued;
- six instances where businesses submitted documentation that did not confirm compliance with all of the orders issued; and
- four instances where there was inadequate follow-up of the status of orders issued.

9.38 We selected a sample of five reinspections to determine if officers had verified compliance with all orders issued. We noted:

- two instances where the reinspection should have been classified as a meeting because it was not comprehensive enough to be considered an inspection;
- three instances where the reinspection did not address all of the orders issued;

- two instances where there was mention of deficiencies not identified in the initial inspection report; and
- two instances where reinspections were not performed on a timely basis.

9.39 *Accident investigations* - The Department is spending an increasing amount of time investigating accidents (Exhibit 9.3). Section 63 of the OH&S Act requires employers to notify the Department of all accidents where an employee is injured or killed, or there has been an accidental explosion.

9.40 Workplace injuries must also be reported to the Workers' Compensation Board. The OH&S Division is able to generate a report of claims received by the Workers' Compensation Board which identifies instances where there has been serious injury to a worker. If an injury or incident is not reported to either the Department or the Workers' Compensation Board, the Department may never become aware of it.

9.41 Officers investigate all significant accidents reported to the Department, as well as a sample of accidents listed on the Workers' Compensation Board report. Accident investigations are documented in preliminary accident investigation reports. An officer's recommendation to perform a more detailed investigation is reviewed and approved by management of the Department.

9.42 In general, we found that stated procedures were used to investigate accidents, and the results of accident investigations and officers' decisions on whether to perform a more detailed investigation or lay a charge under the OH&S Act were appropriately documented. Accident investigation files and any recommendations to lay charges were also reviewed and approved by Division management.

9.43 The Department has recently revised its accident and prosecution investigation procedures. These revised procedures will provide additional guidance to officers and should decrease the time committed to accident investigations. Procedures now allow for a preliminary investigation to be conducted to determine if a full investigation is warranted. Reducing time spent on investigations will allow more time for performing inspections.

9.44 *Complaint investigations* - The Department is receiving an increasing number of workplace safety complaints. The Department has revised its policy on investigating complaints (including complaints not related to specific accidents). The policy will require that certain complaints be first addressed to a workplace's OH&S Committee. It is expected that many complaints can be satisfactorily resolved by such committees, and this will decrease the time spent by Division staff on investigating complaints, allowing officers to spend more time performing inspections.

9.45 In general, we concluded that documentation of the steps taken to investigate complaints needs to be improved. In our testing of complaints, we were unable to determine if they were properly investigated because complaint forms were not in the files and the inspection reports did not identify the specific complaints being investigated. We recommended that adequate documentation be maintained of the filing and investigation of complaints.

9.46 *Review of inspection activity* - Regional managers are responsible for reviewing a sample of inspection reports to ensure inspections are adequately documented, proper orders have been issued and all orders have been complied with. No guidelines have been established for these reviews. As a result of preliminary findings from our audit which indicated problems with inspection files, the Department is examining how it can strengthen this review process. This should improve the quality of inspections and provide useful feedback to OH&S officers.

9.47 *Reporting the results of inspections* - When we began our audit, the Department had no regular reporting of officer work activity. Since then, all officers are required to submit monthly activity reports. However, activity reported is not classified according to the key inspection categories used for goal setting during the performance appraisal process.

9.48 We believe it is important for the Department to monitor both the number of workplace contacts and the time required to complete these activities. The Department should establish guidelines for the time required for an officer to complete various activities. Officers should complete time sheets to permit comparison of actual performance against established guidelines. Staff time is the primary resource that the Division manages and without complete information on how that resource is being applied, managing the resource is much more difficult.

Enforcement of the Act and Regulations

9.49 *Overview* - In accordance with the principles of the Internal Responsibility System, as described in paragraph 9.2, Section 29(1) of the OH&S Act requires businesses with 20 or more employees to have a joint occupational health and safety committee comprised of management and employee representatives. Section 33(1) of the Act specifies that businesses having between five and twenty employees do not need a committee, but must have a health and safety representative selected by the employees. Businesses with fewer than five employees are not required to have a health and safety committee or representative. The main purpose of the health and safety committee or representative is to identify hazards to health and safety, and to ensure effective systems are in place to respond to the hazards identified.

9.50 If a workplace Internal Responsibility System fails to address health and safety, or if requirements of the Act or regulations are not being followed, the Department has the authority to enforce compliance. Under various sections of the Act, officers have broad powers to enter any workplace and conduct any investigation, examination or inquiry considered necessary. They can investigate any injury or accident, and order compliance with the Act and its Regulations.

9.51 There were 8,754 compliance orders issued during 2000-01. This represents an increase of over 200% during the last five years (see Exhibit 9.3 - page 155). The primary causes of the increase are greater targeting of high-risk workplaces and new regulations to enable greater enforcement of safety in the construction industry.

9.52 *Appeal of compliance orders* - Section 55 of the Act allows an officer to issue compliance orders. Appeals of orders issued by an officer, or the decision of an officer not to issue orders, can be made to the director of the OH&S Division in accordance with Section 67 of the Act. After reviewing the appeal, the director can confirm, vary, revoke or suspend the orders or decisions being appealed. The decision of the director can be appealed to a panel established by the Minister in accordance with Section 68 of the Act. Likewise, the appeal panel can confirm, vary, revoke or suspend orders or decisions appealed. Decisions of the appeal panel are final and binding, and can only be appealed to the Nova Scotia Court of Appeal on questions of error in law and jurisdiction.

9.53 Since the Act was amended in 1996, the number of appeals has grown each year. In the 1997-98 fiscal year, there were 15 appeals of officer's decisions, and in 2000-01 there were 30 appeals initiated. Management believes this increase is due to a number of factors (including increased knowledge of the OH&S Act and Regulations) and that the number of appeals will continue to increase.

9.54 We found that the appeal process meets the requirements of the Act. An appeal decision prepared by the director of the OH&S Division or the appeal panel is documented in a standard format and includes a summary of the evidence submitted, a statement of facts, an analysis of the

requirements of the Act and Regulations, and the reasons for the decision rendered. We noted that the Act does not specify any time limits by which the director or appeal panel must render a decision. We were informed that the time to process an appeal can vary depending upon the complexity of the issues.

9.55 Upon the issuance of an order, an aggrieved person has 14 days to appeal. Rights with respect to appeals are described in legislation and various publications of the Department. However, the rights are not communicated in writing at the time an order is issued and there is no policy requiring verbal communication. Considering the complexities of OH&S legislation and regulations, and the short period available to appeal an order, we believe appeal rights should be communicated immediately.

9.56 *Prosecutions* - Prosecutions must be considered in situations where there has been a breach of the Act or Regulations, and:

- the injury, illness or occupational disease suffered by a worker is serious or fatal;
- offenses were committed where there is a high risk of causing either serious or fatal injury to workers; or
- the employer or employee is in wilful non-compliance with the Act and Regulations.

9.57 The prosecution process is documented in the OH&S Division's policy and procedure manual. The Department is currently developing a more comprehensive accident investigation and prosecution manual which will provide additional guidance to officers.

9.58 All investigations leading to a prosecution are to be documented in a standard format. We reviewed a sample of five prosecution files and noted one prosecution report was not prepared in this format.

9.59 The Department has developed a detailed policy on when officers are to consider prosecution. The policy notes that even where there is sufficient evidence for conviction under the Act or Regulations, resource limitations of the courts and the Department, as well as public interest factors, may result in a suspected offender not being prosecuted. The public interest factors are based upon the policy used by the Nova Scotia Public Prosecution Service in determining whether the public interest is best served by a prosecution. The reasons why an officer is recommending or not recommending prosecution must be documented in the prosecution report and based upon the prosecution policy. The recommendation of the officer must be approved by management of the Division. In our testing of prosecution files, we observed that recommendations of prosecution were based upon the guidelines and approved by management of the OH&S Division.

9.60 Penalties which can be imposed by the courts are specified in Section 74 of the OH&S Act. Businesses or individuals found guilty under the Act can be fined up to \$250,000, imprisoned for a period not exceeding two years, or fined and imprisoned. In addition, under Section 75 of the Act, additional penalties can be imposed, including directing the offender to:

- publish the facts related to the offense;
- perform community service; and
- pay the Minister monies which are to be used for public education.

9.61 As previously noted, resource limitations of the courts and the Department may result in a suspected offender not being prosecuted. In some jurisdictions in Canada, summary offense tickets are issued for instances of non-compliance that normally would not lead to prosecution. This provides an alternative to the court system for enforcement. The Department has prepared draft regulations which would allow officers to issue summary offense tickets. However, additional consultation is required before regulations are finalized and submitted to the Minister and Executive Council.

Competency

9.62 *Qualifications and objectivity* - Since 1997, the OH&S Division requires employees hired as OH&S officers to be certified as a Canadian Registered Safety Professional, Professional Engineer, or have equivalent training and experience. A Canadian Registered Safety Professional is a member of a national association of safety practitioners. Officers hired in the past few years who do not have the Canadian Registered Safety Professional designation are required to obtain it in a specified period of time. Officers hired before 1997 who do not have this designation are encouraged, but not required, to obtain it. In February 2000, the Division established occupational hygienist positions to examine concerns of environmental exposure or contamination in a workplace, and incumbents are required to have a Bachelor of Science degree, and either a Master's degree or diploma in Occupational Health, and two years related industrial hygiene experience.

9.63 It is extremely important that all OH&S staff perform their duties without bias or conflict of interest. The Department has a conflict of interest policy to help ensure all staff maintain independence in their daily activities. On appointment to a position, and throughout employment with the Department, officers must declare any conflicting private interests, including situations where an officer is paid for off-duty work relating to occupational health and safety (e.g., after-hours training). If an officer is asked to perform an inspection, investigation or other 'coercive' activity at a company where he or she has or may be perceived to have a conflict of interest, the officer is required to inform management. Upon reporting of a conflict of interest by an officer, or a verified report from any other source, management will assign a different officer to the case.

9.64 For OH&S purposes, the Province is divided into 30 territories and 31 officers and occupational hygienists are assigned to the various areas. However, there is no policy on rotating officers among the territories to help maintain the objectivity of officers, provide opportunities for experience, and allow for different perspectives to be applied to individual inspections. The Department attempts to assign officers to territories closest to the place of residence to avoid excessive travel time and costs. We recommended that the Department more closely examine the costs and benefits of implementing a system of officer rotation, especially in areas of greater concentration of officers and workplaces.

9.65 *Training* - It is mandatory for new employees to receive up to five weeks training before assuming job responsibilities. The training includes a review of OH&S legislation, regulations and policies, as well as courses offered by the RCMP and the Nova Scotia Construction Safety Association. The OH&S Division has a mentoring program for new employees. For up to six weeks subsequent to the completion of mandatory courses, new officers are accompanied by an experienced employee who will guide and assist with work assignments. At the end of the mentoring period, a review of the employee's progress is performed.

9.66 Currently all training taken by officers must be reported to management. The Division also conducts a week-long training session on a semi-annual basis to review Division activities and receive presentations by internal and external parties on specific OH&S topics. At the time of our audit, the Division was preparing a five-year training schedule for OH&S officers. A computerized system is being implemented to track training taken by staff. The courses required will be related

to OH&S issues and divided into mandatory, recommended and supplemental (in-house) categories. Training requirements will be reviewed as part of the annual performance appraisal process.

9.67 *Performance monitoring* - As discussed above, the OH&S Division has established a mentoring program to assist in developing and assessing the performance of new officers. In February 2000, the Division adopted the performance appraisal system used for all employees of the Province. Previous to this, performance appraisals were not being conducted in the Field Services Section of the OH&S Division. The appraisals will be done on an annual basis and employee performance will be assessed against goals established at the beginning of the assessment period. The appraisals will be used to identify areas of strength, as well as matters of concern which need to be addressed over the next evaluation period. The appraisals enable employees to have input into their career and personal development plans.

Accountability

9.68 *Accountability information* - An integral part of the accountability process is provision of sufficient, appropriate, understandable and timely information on areas of assigned responsibilities. The accountability process within the OH&S Division relies heavily on personal contact. There is frequent daily interaction, as well as bi-weekly and monthly meetings. In addition, senior management of the OH&S Division reports formally to the Deputy Minister during bi-weekly Department senior management meetings. As part of our audit, we examined minutes of internal Division meetings and found that management regularly focuses on operational issues and application of the Act.

9.69 The Department prepares an annual report. The most recent annual report, tabled with the House of Assembly on April 5, 2000, was for the year ended March 31, 1999. We believe 12 months is too much of a delay for reporting on the performance of the Department. We recommended that the annual report be prepared and issued on a more timely basis; not more than six months after year end.

9.70 In addition, the OH&S Division is required to prepare an annual report for presentation to the Minister's Advisory Council, and excerpts from it are included in the Department's annual report. In the fall of 2000, the Division presented its annual report on Divisional activities for the year ended March 31, 2000 to the Advisory Council.

9.71 We observed that the Department's annual report lacks substantive information on the performance of the OH&S Division and does not fulfil its potential as an accountability document. The report does contain Divisional objectives, commentary on significant events which have affected the Division and general information on Divisional activities. However, there is insufficient reporting of the performance of the Division against its stated goals.

9.72 Performance information included in the report is derived from the Workers' Compensation Board of Nova Scotia, Statistics Canada, and data generated internally by the Division. However, the OH&S Act applies to more entities than those monitored by the Workers' Compensation Board. As discussed in paragraph 9.27, certain information on accidents obtained from the Workers' Compensation Board is considered insufficient for OH&S purposes. As well, the Division has been unable to determine the number of workplaces covered under the Act. Some outcome measures are included in the annual business plan for the Department. However, our review of the outcome measures indicated they are mainly historical statistics which do not closely relate to OH&S activities, or in a qualitative format and unable to be measured.

9.73 Our review of the Department's annual report also revealed that it does not contain information relating to compliance with legislation. This is a major responsibility for the

Department, and more specifically the OH&S Division. In our view, external reporting should be more pro-active with respect to compliance responsibilities. We suggest that reports state the key pieces of legislation pertaining to the Department, the Department's responsibility for ensuring compliance, how compliance is managed and ensured, and an assessment of performance in this area.

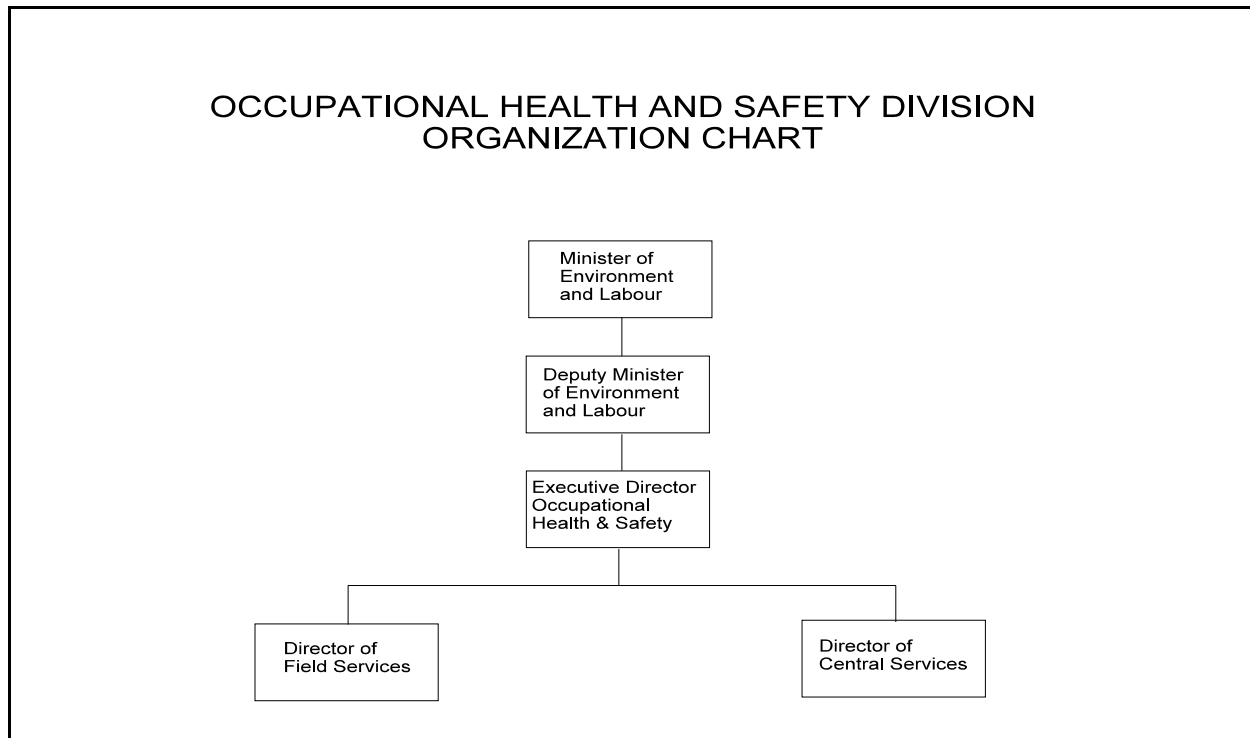
CONCLUDING REMARKS

9.74 The process for the development of occupational health and safety standards is not timely, but the process for promulgating occupational health and safety standards is well performed.

9.75 The Department is complying with key provisions of the Occupational Health and Safety Act and the related Regulations. We also concluded that the Department's inspection process needs improvement with respect to the selection and documentation of inspections and the follow-up of orders issued. The Department needs to increase the frequency of inspections and ensure high-risk businesses are targeted for inspection. The Department's monitoring of inspection activities needs strengthening.

9.76 The system for enforcement of the Occupational Health and Safety Act and Regulations is satisfactory. The OH&S Division has the necessary processes in place to ensure the competence of personnel involved in OH&S inspection and enforcement activities.

9.77 The Department has a reasonable internal accountability framework. There is a need to improve the accountability process as it relates to the development and disclosure of performance information within the OH&S Division and in the Department's reporting to the House of Assembly.

Exhibit 9.1

Other positions reporting to the Deputy Minister:

- Executive Director of Alcohol and Gaming
- Executive Director of Public Safety
- Executive Director of Labour Services
- Executive Director of Environmental Monitoring and Compliance
- Executive Director of Environmental and Natural Area Management
- Director of Information and Business Services
- Superintendent of Pensions
- Director of Labour Standards
- Superintendent of Insurance
- Director of Policy
- Director of Communications

Exhibit 9.2**AUDIT CRITERIA**

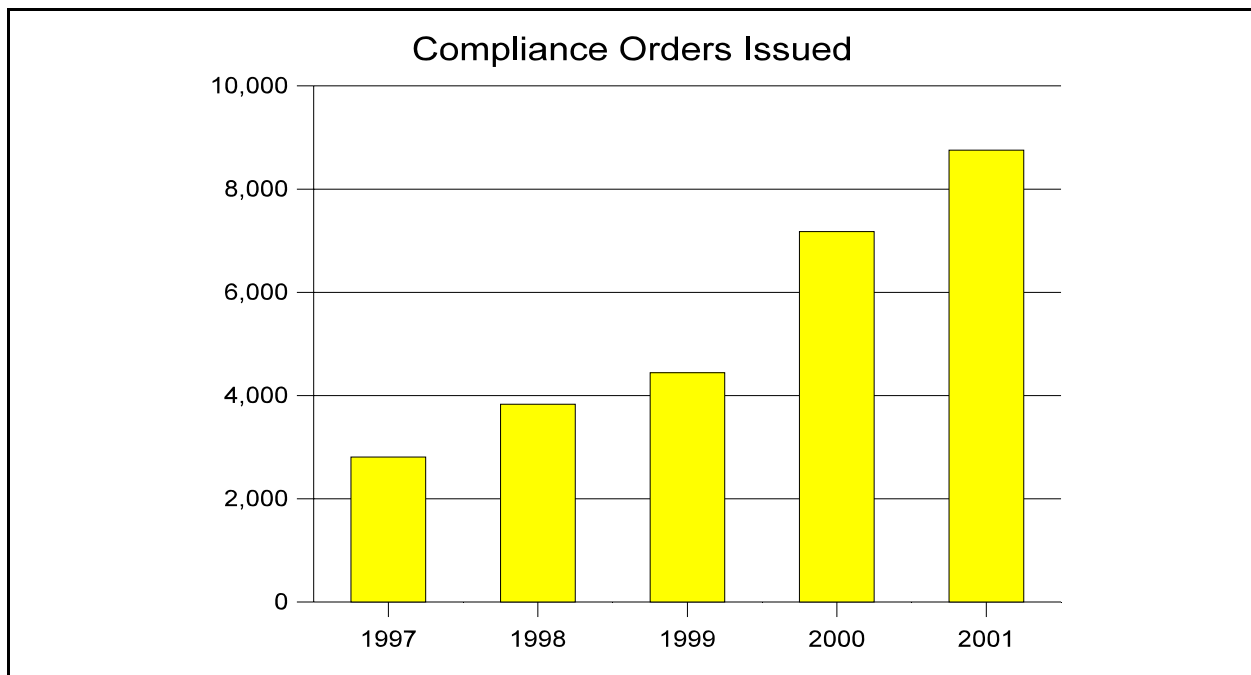
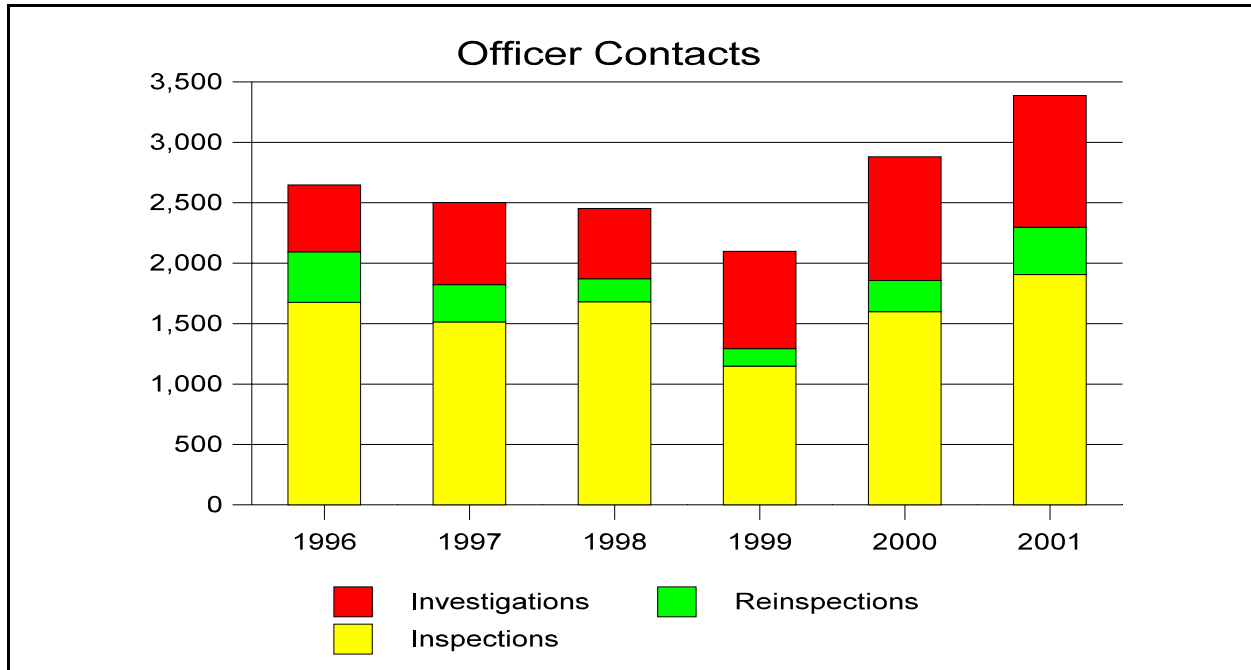
Audit criteria are reasonable and attainable standards of performance and control, against which the adequacy of systems and practices can be assessed. They relate to the audit objectives developed for an assignment and are used to design detailed tests and procedures.

The following criteria were used in our audit of the Occupational Health and Safety (OH&S) Division of the Department of Environment and Labour.

- *Standards* - The Department should have sufficient knowledge to determine where occupational health and safety standards are in need of development or change. There should be systems and procedures in place to develop appropriate occupational health and safety standards on a timely basis. There should be ongoing public education and promotion of occupational health and safety standards.
- *Compliance with legislation* - The Department should comply with applicable provisions of Provincial OH&S legislation and regulations. The Department's policies should be consistent with legislation and regulations. There should be a process which enables management to know whether or not key provisions of legislation and regulations are being complied with. There should be a system to ensure that inspections are carried out on a regular and timely basis. There should be a system to follow-up on the implementation of inspection orders.
- *Enforcement of the Act and regulations* - There should be a system to ensure Provincial legislation and regulations are appropriately enforced. Powers, roles and responsibility for enforcement of legislation and regulations should be clear.
- *Competency* - Personnel should have appropriate education and qualifications to administer the laws for which they are responsible. Department policies should reflect current legislative requirements for industry safety standards. Changes to legislation, regulations and policies should be communicated to personnel on a timely basis. There should be a process to ensure personnel receive ongoing training in industry safety standards/technologies and other relevant areas. There should be a system of regular evaluation of staff competency and performance, with corrective actions taken when deficiencies are observed.
- *Accountability* - There should be adequate systems and controls to ensure the completeness, accuracy and timeliness of information reported. There should be relevant and timely reporting to inform the Minister and House of Assembly of the Department's performance with respect to its OH&S mandate. The Department should know whether health and safety standards are being implemented and having a positive impact.

Exhibit 9.3

OCCUPATIONAL HEALTH AND SAFETY DIVISION



DEPARTMENT OF ENVIRONMENT AND LABOUR'S RESPONSE

In response to your findings, as a result of the broad scope audit conducted of the Occupational Health and Safety Division, I would provide the following updates on activities.

Regulation Development Process

The following improvements have been made to the Regulation Development Process:

- 1) A schedule has been developed to identify when each regulation is planned for review or a new regulation planned for development.*
- 2) A Regulation Review Coordinator has been appointed to oversee the entire review process.*
- 3) A detailed workplan has been developed for each active regulation and a template process developed for new regulations. These both include milestones and time lines.*
- 4) Specific personnel are named as responsible for each step in the workplan and progress reviewed.*
- 5) The work on the proposed Diving Regulations, of which specific mention was made, has been completed and the final paperwork is being done to move these to Treasury and Policy Board Review and final drafting by Justice.*

Application of Legislation

The issue of jurisdiction between the provincial and federal governments is one that is subject to ongoing revision as legal opinion and case law evolves in the area. We maintain a level of vigilance to ensure that we can respond to changing circumstances.

- 1) We continue to apply decisions rendered in jurisdictional areas to the operations of the Occupational Health and Safety Division and work to resolve outstanding issues.*
- 2) The courts have recently confirmed provincial jurisdiction in relation to the business of fishing and we are, through the Nova Scotia Department of Agriculture and Fisheries, identifying representative associations to develop guidelines to address health and safety issues in this sector.*
- 3) In the offshore petroleum sector the Department is working with our Newfoundland and Federal counterparts to revise legislation to clarify the question of jurisdiction. The Occupational Health and Safety Division maintains its oversight roll as we work with representatives of the Canada Nova Scotia Offshore Petroleum Board.*
- 4) The Occupational Health and Safety Division maintains a standing committee with Human Resources Development Canada, our Federal counterpart, to discuss and resolve issues as they arise.*

Targeting of High Risk Employers

The following improvements have been made to resource allocation to allow for additional targeting of high risk employers.

- 1) *The Occupational Health and Safety Division has introduced a trial targeted workplace inspection system. Our targeting is based on Workers' Compensation Board data. We are presently carrying out these targeted inspections in the following industry sectors: Health and Social Services, Accommodation & Food Beverages and Manufacturing based on the results of the data analysis.*
- 2) *In addition to inspections the Workers' Compensation Board and the Occupational Health and Safety Division target sectors for educational initiatives. We have completed in November 2001, six information sessions across the Province directed at the health care sector. Practices which are resulting in the increasing accident experience have been identified as well as opportunities for employers to address these areas.*
- 3) *As we incorporate a greater degree of targeting into the work of the Occupational Health and Safety Division we are mindful that we need to balance those services with the response to complaints investigations and other Divisional activities that must as well be maintained. With the introduction of the process improvements in other areas such as our policy and format for accident investigations / prosecutions, we believe that the time previously spent on these activities can be reduced and reallocated to inspection activities.*

Quality of Inspection Files

The following improvements have been made to ensure that inspection file quality is maintained.

- 1) *Management has established a standardized format to monitor inspection reports, orders and investigations to identify deficiencies in document completion to permit issues to be identified and addressed.*
- 2) *In January, 2002 steps will be undertaken, in consultation with Legal Services, to identify specific wording for compliance orders. Priority will be placed on sections of the Act/Regulations most consistently used by the officers. The annual report clearly identifies the areas where we are issuing compliance orders.*
- 3) *To improve the area file documentation and service to our clients we have developed a compliance notice form for use by clients in receipt of orders and have asked officers to inform all clients receiving orders they have the right to appeal the order until we can reformat the order form to include this information.*

Monitoring of Work Activity

The following improvements have been made to the management monitoring of work activity.

- 1) *The Occupational Health and Safety Division has developed a request for proposals and is seeking approval to replace the current inspection tracking system with one which will provide enhanced abilities to record information, track activity and provide activity reports to officers and supervisors.*
- 2) *The proposed inspection tracking system will provide a number of new features for use in the work of the Occupational Health and Safety Division including the further standardization, in consultation with Legal Services, of specific wording for compliance orders.*
- 3) *In the interim, while the proposed tracking system is developed management has established a standardized format to monitor inspection reports, orders and investigations to identify deficiencies in document completion to permit issues to be identified and addressed.*
- 4) *Deficiencies noted during the review conducted of files are being addressed through a review of inspection reports by supervisors.*
- 5) *The Occupational Health and Safety Division has developed a checklist related to the operation of the internal responsibility system operation in workplaces and is developing additional checklists to address the issue of consistency and quality of inspections.*
- 6) *The officers monthly status report to their regional managers have been revised to ensure that these reports focus on the seven inspection activities agreed to for the year which are noted on the performance appraisals for the officers. Managers require officers to submit a list of all outstanding orders monthly. Any outstanding orders not being acted upon are reviewed with each officer.*
- 7) *A time management system will be introduced in January, 2002 which is intended to identify the time an officer spends in the following areas: travel, meetings, inspections, complaints, re-inspections and administration to assist the Occupational Health and Safety Division better identify our resource uses. We hope to incorporate a time management system into our new tracking system when it is implemented.*

Annual Report

The following improvements have been made to the Division's annual report:

- 1) *The current format of the report is in accordance with a framework agreed to by the Occupational Health and Safety Advisory Council who, pursuant to section 9 of the Occupational Health and Safety Act, are the primary recipients of the report.*
- 2) *The current format lists several goals of the Division, originating both from the Department business plan and from the framework document itself. In each case, where the data is available, the Division's performance in relation to the goal is clearly stated.*

- 3) *The key pieces of legislation and the associated regulations that we enforce are identified.*
- 4) *The report has been made available on the Internet, increasing its usefulness as an accountability tool.*
- 5) *The goals of the Division are as much related to injury reduction and service as they are to the responsibility for ensuring compliance with the regulations. The current annual report format does review our performance in the areas of issuing and following up on orders and does indicate where violations are most commonly cited which provides an assessment of client compliance with the various laws.*
- 6) *The Occupational Health and Safety Division continues to work with similar organizations from other provincial, territorial and the federal governments to identify uniform performance measures that can be used and will increase comparability of work between jurisdictions.*

Additional Areas

- 1) *The policy and procedures manual is presently under a full review with the stated intent to structure the manual so more information can be placed on the internal Intranet site that is readily available to all officers.*
- 2) *New policies and procedures are being introduced and existing policies and procedures are being reviewed to standardize them with current best practices in a number of areas including re-inspections, complaints and a revised accident reporting and investigation format.*
- 3) *The Occupational Health and Safety Division has entered into discussions with staff of the Nova Scotia Business Registry and will in the proposed inspection tracking system use the Business Registry information to provide an up to date listing of business in the province to officers in the field. We are also planning a mail out to newly registered businesses to inform them of the health and safety laws of the province.*
- 4) *The tracking of training for staff was upgraded to a new computerized system in November, 2001. Training is based on requirements for mandatory, recommended and supplemental training. Five year training schedule is presently being revamped and supervisors will be responsible to see the implementation of the additional training.*
- 5) *Performance monitoring system continues to be expanded upon with emphasis being placed on the seven inspection items as well as individual career and personal development plans. All officers received a half day training in September, 2001 provided by the Department of Human Resources on time management, performance appraisals, and setting personal development goals.*

- 6) *There is a considerable cost associated with rotating officer territories, particularly in the non urban regions of the province. In urban areas we are rotating officers and will continue to consider a strategy for rural areas.*

In conclusion thank you for the opportunity to update the status of work within the Occupational Health and Safety Division and comment on the audit of our activities.
