

# SKM 4353 Safety in Petroleum Engineering

## Safety Legislations in Malaysia OSHA 1994 and other relevant Acts

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# Historical Perspective

- Evolution of OSH Legislation in Malaysia
  - 1844 British Legislation – specific safety & health
  - Piecemeal legislation and regulations for example transporting machinery on the train
- 1972 Lords Roben “Committee of Inquiry” – Robens Report on OSH
- Factories and Machinery Act (139) in 1967
  - Part II Safety, Health and Welfare – enforced 1970
- Occupational Safety and Health Act (514) 1994

# Factory & Machinery Act 1967

- In the year 1967, the Factory and Machinery Act was approved by the Parliament of Malaysia.
- In 1970, the Factory and Machinery Act and eight regulations under the act were enforced.
- This act was legislated to overcome the weaknesses in the Machinery Ordinance 1953,
  - They were not protected if they are working in a workplace that doesn't use machinery.

# OSHA 1994

- This legislation was made considering the fact that the Factory and Machinery Act 1967 **only covers** occupational safety and health in the **manufacturing, mining, quarrying and construction industries**, whereas the other industries are not covered.
- The purpose of Occupational Safety and Health Act 1994 is **to promote and encourage** occupational safety and health awareness among workers and to create organization along with effective safety and health measures.

# OSHA 1994

- **Main principles** that had been taken as the foundation in the drafting of this Act.

## 1. **Self-regulation**

To handle issues relating to occupational safety and health, employers must develop a good and orderly management system. Starting with formation of a safety and health policy and consequently employers have to make the proper arrangements to be carried out.

# OSHA 1994

## 2. Consultation- tri partite

where employers, employees and the government must negotiate to settle issues and problems relating to occupational safety and health at the workplace.

## 3. Co-operation

where employers and employees must co-operate to take care, nurture and to increase the quality of occupational safety and health at the workplace.

Without co-operation between employers and employees, none of the occupational safety and health programmes carried out would succeed.

# Application of OSHA

Apply throughout Malaysia to the industries as follows ([First Schedule](#) )

- » Manufacturing;
- » Mining and Quarrying;
- » Construction;
- » Agriculture, Forestry and Fishing;
- » Utilities such as Electricity, Gas, Water and sanitary Services;
- » Transport, Storage and Communication;
- » Wholesale and Retail Trades;
- » Hotels and Restaurants;
- » Finance, Insurance, Real Estate and Business Services
- » Public Services and Statutory Authorities

# Application of OSHA

## NOTES :

- » Not applicable to work on board ships governed by the Merchant Shipping Ordinance 1952, the Merchant Shipping Ordinance 1960 of Sabah and Sarawak
- » Not applicable to armed forces
- » This Law is in addition to previous law pertaining to occupational safety and health. If there is any conflict, this Law shall supercede the previous law.



# FMA 1967 vs OSHA 1994

	FMA 1967	OSHA 1994
Scope	Only cover OSH in the <b>manufacturing, mining, quarrying, works of engineering and construction</b> <b>Cover 24 % of the man power</b>	Cover all economic activities & government except armed forces & seafarers <b>Cover 90% of the man power</b>
Approach	<ul style="list-style-type: none"> <li>- Prescriptive</li> <li>- Too dependent on government</li> <li>- Concern for inspection by regulation authorities</li> </ul>	<ul style="list-style-type: none"> <li>- self regulation</li> <li>- supported by code of practices, guidelines etc</li> <li>- tripartite responsibilities</li> <li>- worker cooperation &amp; participation</li> </ul>
Objective	<ul style="list-style-type: none"> <li>- focus on control of factories &amp; machinery</li> <li>- registration &amp; inspection of machines</li> <li>- less provision for health</li> </ul>	<ul style="list-style-type: none"> <li>- to safeguard, health &amp; welfare of employees &amp; those at the place of work for example visitors, contractors etc</li> </ul>

# Objectives of OSHA 1994

1. To secure the safety, health and welfare of persons at work against risks
2. To protect persons at a place of work other than persons at work against risks
3. To promote an occupational environment for persons at work which is adapted to their physiological and psychological needs.
4. To provide the means whereby the associated occupational safety and health legislations may be progressively replaced by a system of regulations and approved industry codes of practice operating in combination with the provisions of this Act designed to maintain or improve the standards of safety and health.

“Responsibilities to ensure the safety and health at the workplace lies with those who create the risk and with those work with the risk”

# Concept of OSHA 1994

- Accident prevention is an essential part of good management and workmanship
- Management and workers must cooperate
- Top management must take the lead
- A define and known safety and health policy
- Organization and resources to achieve policy
- Best available knowledge and methods

Act 514

Occupational Safety and Health Act 1994

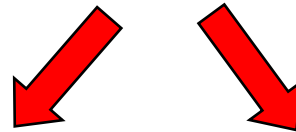


Regulations under OSHA 1994



Occupational Safety and Health (Safety and Health Officer) Order 1997

Occupational Safety and Health (Prohibition of Use of Substance) Order 1999



Guidelines

Code of practice

# Regulations

- i. OSH (Employers' Safety and Health General Policy Statements) (Exception) Regulations 1995
- ii. OSH (Control of Industrial Major Accident Hazards) Regulations 1996- CIMAH
- iii. OSH (Safety and Health Committee) Regulations 1996-SHC
- iv. OSH (Classification, Packaging and Labelling of Hazardous Chemicals) Regulations 1997- CPL
- v. OSH (Safety and Health Officer) Regulations 1997-SHO
- vi. OSH (Use and Standards of Exposure of Chemicals Hazardous to Health) Regulations 2000- USECHH
- vii. OSH (Notification of Accident, Dangerous Occurrence, Occupational Poisoning and Occupational Disease) Regulations 2004-NADOOPOD

Source: Department of OSH,  
Malaysia

1	Guidelines for Public Safety and Health at Construction Site	1994
2	Guidelines on Occupational Safety and Health in the Office	1996
3	Guidelines on First-Aid Facilities in the Workplace	1996
4	Examination Syllabus for Engineer's Certificate of Competency (Steam and Internal Combustion Engines) Examination	1996
5	Guidelines on Method of Sampling and Analysis for Airborne Lead	1997
6	Guidelines for the Formulation of a Chemical Safety Datasheet	1997
7	Guidelines for the Classification of Hazardous Chemicals	1997
8	Guidelines for Labelling of Hazardous Chemicals	1997
9	Guidelines on Occupational Safety and Health in Tunnel Construction	1998
10	Garis panduan Pendaftaran Tenaga Pengajar & Pengendalian Kursus Induksi Keselamatan & Kesihatan Pekerja Sektor Binaan	2000
11	Guidelines for the Registration of Assessors, Hygiene Technician and Occupational Health Doctor (OHD)	2000
12	Guidelines for the Preparation of a Chemical Register	2000
13	Guidelines on Trenching for Construction Safety	2000
14	Assessment of the Health Arising from Use of Hazardous Chemical in the Workplace (2nd Edition)	2000
15	Guidelines on the Control of Chemicals Hazardous to Health	2001
16	Guidelines on Medical Surveillance	2001
17	Garis panduan Penyediaan Dokumen Demonstrasi Operasi Selamat (Am)	2001
18	Garis panduan Penyediaan Dokumen Demonstrasi Operasi Selamat (Penstoran Gas Petroleum Cecair Di Dalam Selinder)	2001
19	Panduan Bagi Pencegahan Tekanan Dan Keganasan Di Tempat Kerja	2001
20	Guidelines on Monitoring of Airbone Contaminant For Chemicals Hazardous To Health	2002
21	Guidelines on Occupational Safety and Health for Standing at Work	2002
22	Guidelines on Reproductive Health Policy & Programmes at the Workplace	2002
23	Guidelines on Occupational Safety and Health in Agriculture	2002
24	Guidelines on Occupational Vibration	2003
25	Guidelines on Occupational Safety and Health for Seating at Work	2003
26	Garis panduan Untuk Memohon Sebagai Pusat Pengajar Pegawai Keselamatan dan Kesihatan	2003
27	Guidelines on Occupational Safety and Health in Fishing and Aquaculture Operation	2003
28	Guidelines on Gender Issues in Occupational Safety and Health	2003
29	Guidelines on Occupational Safety and Health for Working with Video Display Unit (VDU's)	2003
30	Guidelines on Occupational Safety and Health In Logging Operations	2004
31	Guidelines on Preventing and Responding to Drugs and Alcohol Problems In The Workplace	2004
32	Guidelines on Occupational Safety and Health In Service Sector	2004
33	Guidelines on First-Aid in the Workplace (2nd Edition)	2004
34	Guidelines on Occupational Health Services	2005



# OSHA 1994

- National Council for OSH (NCOSH)
- General duties of
  - Employers, self-employed person
  - Designers, manufactures and suppliers
  - Employees
- Safety & health organization
- Reporting of accident, dangerous occurrence, occupational poisoning, and disease
- Prohibition of the use of plant or substance
- Industry code of practice
- Enforcement and investigation
- Liability for offences
- Appeals
- Penalties



# National Council

## Membership of the Council

- » National Council for Occupational Safety and Health must be established under this Act. Membership of the Council :-
  - ~ 3 persons from organisations representing employers;
  - ~ 3 persons from organisations representing employees;
  - ~ 3 or more persons from Ministries or Departments whose responsibility is related to occupational safety and health;
  - ~ 3 or more person, of whom at least one woman, from organisations or professional bodies the activities of whose members are related to occupational safety and health;
- » The provisions of [Second Schedule](#) shall apply to members of the Council.

# National Council

## **Powers and Function of the Council**

- » The Council have power to do all things necessary to assist the objects of this Act.
- » Carry out investigations and make report to Minister with regard to any matter relating to the objects of this Act, in particular, with regard to :-
  - ~ changes it consider desirable to occupational safety and health legislation;
  - ~ the improvement of the administration and enforcement of occupational safety and health legislation;
  - ~ the fostering of a co-operative consultative relationship between management and labour on safety, health and welfare of persons at work;
  - ~ the special problems with respect to occupational safety, health and welfare of women, handicapped persons and other groups in the community;

# National Council

The establishment of adequate methods of control of industrial chemicals at a place of work;

- ~ The statistical analysis of occupationally related deaths and injuries;
- ~ The provision of health care facilities at a place of work;
- ~ The fostering of the development and adoption by law of industry codes of practice related to occupational safety, health and welfare; and
- ~ The development of rehabilitation plans and facilities to assist persons injured at a place of work.

## **Appointment of Secretary to the Council**

- » The Minister shall appoint a public officer from the office of the Director General to be the secretary to the Council.
- » The Council may, with the approval of the Minister, arrange for the use of the services of any staff or facility of the office of DG.

# General Duties of Employers and Self-Employed Persons

## **General duties of employers and self-employed persons to their employees**

- » To ensure as far as is practicable, the safety, health and welfare at work of all his employees which include the following : -
  - ~ The provision and maintenance of plant and systems of work that are, so far as is practicable, safe and without risks to health;
  - ~ The making of arrangements for ensuring, so far as is practicable, safety and absence of risks to health in connection with the use or operation, handling, storage and transport of plant and substances;
  - ~ The provision of such information, instruction, training and supervision as is necessary to ensure, so far as is practicable, the safety and health at work of his employees;

# General Duties of Employers and Self-Employed Persons

~ So far as is practicable, as regards any place of work under the control of the employer or self-employed person, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of the means of access to and egress from it that are safe and without such risks;

~ The provision and maintenance of a working environment for his employees that is, so far as is practicable, safe, without risks to health, and adequate as regards facilities for their welfare at work.

## Duty to formulate safety and health policy (section 16)

- » It shall be the duty of every employer and every self-employed person to prepare and be appropriate revise a written statement of his general policy with respect to the safety and health at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees.

# General Duties of Employers and Self-Employed Persons

## **General duties of employers and self-employed persons to persons other than their employees**

- » To conduct his undertaking in safe manner, as far as practicable and to inform about the risks associated with their undertaking to persons other than their employees who may be affected.
- » To give to persons, not being his employees, who may be affected by the manner in which he conducts his undertakings, the prescribed information on such aspects of the manner in which he conducts his undertaking as might affect their safety/health.

## **Duties of an occupier of a place of work to persons other than his employees**

- » Shall take such measures as are practicable to ensure that the premises, all means of access thereto and egress there from available for use by persons using the premises, and any plant or substance in the premises or provided for use there, is or are safe and without risks to health.

# General Duties of Employers and Self-Employed Persons

- » A person who has an obligation of any extent in relation to :-
  - ~ The maintenance or repair of a place of work.
  - ~ The prevention of risks to safety and health that may arise from the use of any plant or substance in the place of work.
- » Penalty for person contravenes this is fine not exceeding RM 50,000 or to imprisonment for a term not more than two years or both.

# General Duties of Designers, Manufacturers and Suppliers

## **General duties of manufacturers, etc. as regards plant for use at work**

- » Duty of person who designs, manufactures, imports or supplies any plant for use at work or person who formulates, manufactures, imports or supplies any substance for use at work to : -
  - ~ Ensure, as far as is practicable, that the plant or substance is safe without risks to health when properly used; and
  - ~ Take necessary step to secure that there is adequate information so that the use of plant or substance is in accordance which is designed and intended for.



# General Duties of Designers, Manufacturers and Suppliers

- »Duty of person who undertakes the design or manufacture of any plant for use at work to carry out or arrange for the carrying out of any necessary research with a view to the discovery and the elimination or minimization of any risk to safety or health to which the design or plant may give rise.
- »Duty of person who erects or installs any plant for use by persons at work to ensure that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when property used.

## **General duties of manufacturers, etc. as regards substances for use at work**

- »It shall be the duty of a person who formulates, manufactures, imports or supplies any substance for use at work :-
  - ~ to ensure, as far as is practicable, that the substance is safe and without risks to health when properly used;

# General Duties of Designers, Manufacturers and Suppliers

- ~ to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him; and
- ~ to take such steps as are necessary to ensure that there will be available adequate information about the results of any relevant test which has been carried out on and about any condition necessary to ensure that it will be safe and without risk to health when properly used.
- » Penalty for person contravenes the provisions is fine not exceeding RM 20,000 or to imprisonment for a term not more than two years or both.

# General Duties of Employees

## General duties of employees at work

- » Duty of every employee while at work: -
  - ~ To take reasonable care for safety and health of himself and of other persons who may be affected at work;
  - ~ To co-operate with his employer or any other other person in the discharge of any duty or requirement imposed on the employer or that other person by this Act or any other regulation made thereafter;
  - ~ To wear or use all times PPE provided by the employer; and
  - ~ To comply with any instruction or measure on occupational safety and health.
- » Penalty for person contravenes this section is fine not exceeding RM 1,000 or to imprisonment for a term not more than three months or both.

# General Duties of Employees

## **Duty not to interfere or misuse things provided pursuant to certain provisions**

- » If found guilty, be liable to a fine not exceeding RM20,000 or to imprisonment for a term not more than two years or both.

## **Duty not to charge employees for things done or provided**

- » No employer shall levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of this Act or any other regulation made thereafter.

# General Duties of Employees

## Duty not to discriminate against employee

- » No employer shall dismiss an employee by reason only that the employee :-
  - ~ makes a complaint about a matter which he considers is not safe or is a risk to health;
  - ~ is a member or exercises any of his functions as a member of a safety and health committee.
- » No trade union shall take any action on any of its members who, being an employee at a place of work :-
  - ~ makes a complaint about a matter which he considers is not safe or is a risk to health;
  - ~ is a member of a safety or exercises any of his functions as a member of the safety and health committee established pursuant to this Act; or
- » Penalty for person contravenes this section is fine not exceeding RM 10,000 or to imprisonment for a term not more than one year or both.

# Safety and Health Organizations

## Medical surveillance

- » Minister may order a medical surveillance if :-
  - ~ cases of illness he has reason to believe may be due to the nature of the process or other conditions of work;
  - ~ cases of change in process or substance which may cause risk of injury;
  - ~ persons below age 16 years are about to be employed in work which may cause risk of injury; or
  - ~ risk of injury to health from Third Schedule of new substance as result of process changes.
- » Penalty for person contravenes this section is fine not exceeding RM 5,000 or to imprisonment for a term not more than six months or both.

# Safety and Health Organizations

## Safety and health officer

- » Safety and health officer shall be appointed to such class of industries as the Minister may published in the Gazette.
- » Shall employ a competent person to act as safety and health officer.
- » Safety and health officer employed for ensuring this Act and any regulation thereafter is followed.
- » The safety and health officer shall possess such qualifications or have received such training as the Minister may from time to time prescribe.
- » Penalty for person contravenes this section is fine not exceeding RM 5,000 or to imprisonment for a term not more than six months or both.

# Safety and Health Organizations

## Establishment of safety & health committee at place of work

- » Every employer shall establish a safety and health committee at the place of work in accordance with this section if :-
  - ~ there are 40 or more persons employed at the place of work; or
  - ~ the Director General directs the establishment of such a committee at the place of work.
- » Every employer shall consult the safety and health committee to the making and maintenance of arrangements which will enable him and his employees to co-operate in promoting and developing measures to ensure the safety and health at the place of work and in checking the effectiveness of such measures.
- » Penalty for person contravenes this section is fine not exceeding RM 5,000 or to imprisonment for a term not more than six months or both.



# Safety and Health Organizations

## Functions of safety and health committee

- » The safety and health committee established :-
  - ~ shall keep under review the measures taken to ensure the safety and health of persons at the place of work;
  - ~ shall investigate any matter at the place of work :-
    - which a member of the committee or a person employed thereat considers is not safe or is a risk to health; and
    - which has been brought to the attention of the employer;
  - ~ shall attempt to resolve any matter referred to above and, if it is unable to do so, shall request the Director General to undertake an inspection of the place of work for that purpose; and
  - ~ shall have such other functions as may be prescribed.

## Notification of Accidents, Dangerous Occurrence, Occupational Poisoning & Occupational Diseases

- » An employer shall notify the nearest occupational safety and health office of any accident, dangerous occurrence, occupational poisoning or occupational disease which has occurred or is likely to occur at the place of work.
- » Every registered medical practitioner or medical officer attending to a patient whom he believes to be suffering from any of the diseases listed in the Third Schedule of the Factories and Machinery Act 1967, or any disease named in any regulation or order made by the Minister under this Act, or occupational poisoning shall report the matter to the Director General.

## Notification of Accidents, Dangerous Occurrence, Occupational Poisoning & Occupational Diseases

- » Director General may set up an inquiry by an occupational safety and health officer into the nature and cause of the accident, dangerous occurrence, occupational poisoning or occupational disease if he thinks necessary.
- » The Director General may appoint one or more persons of engineering, medical or other appropriate skills or expertise to serve as assessors in any such inquiry and may be paid an allowance .

# Prohibition against use of Plant or Substances

- » Director General may by order published in the Gazette prohibit the use of any plant or substance which in his opinion is likely to affect the safety and health of persons and work. But before making the order, he should consult any Government department or other body which appears to him to be appropriate.
- » Where the Director General proposes to exercise his power, he shall consult any Government department or other body which appears to him to be appropriate.
- » A person who is aggrieved by this order may, within thirty days of the order, lodge an appeal with the secretary to the Council who shall transmit the appeal to an appeal committee appointed by the Minister.

# Industry Codes of Practice

- » The Minister may, approve industry codes of practice comprising such directions as may appear to him to be necessary or proper for the guidance of persons in complying with the requirements of the provisions of this Act.
- » The Minister may, from time to time revise the industry codes of practice by amending, deleting, varying or adding to the provision of the industry codes of practice.
- » An industry code of practice may :-
  - ~ consist of any code, standard, rule, specification or provision relating to occupational safety or health approved by the Minister; or
  - ~ apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the industry code of practice is approved or as amended, formulated or published from time to time.

# Industry Codes of Practice

- » The Minister shall cause to be published in the Gazette the approval of an industry code of practice and the amendment or revocation thereof.

## **Use of industry codes of practice in proceedings**

- » It is alleged that a person has contravened or failed to comply with a provision of the Act in relation to which an approved industry code of practice was in effect at the time of the alleged contravention or failure :-
  - ~ the approved industry code of practice shall be admissible in evidence in the proceedings; and
  - ~ if the court is satisfied in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention or failure that :-
    - a provision of the approved industry code of practice is relevant to the matter; and
    - the person failed at any material time to observe the provision of the approved industry code of practice.

# Enforcement and Investigation

- » An occupational safety and health officer at any reasonable time, may inspect and examine any place of work other than a place used solely for residential purposes provided that he may enter the residential place with the consent of the owner or if he has reasonable cause to believe that a contravention of this Act is likely to be committed.
- » In exercising his powers, an officer may :-
  - ~ make examination and investigation of any plant, substance, article or other thing as may be necessary to ascertain whether or not this Act has been complied with;
  - ~ direct that the place of work or any part thereof, or anything therein, shall be left undisturbed;
  - ~ take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation;

# Enforcement and Investigation

- ~ take samples of any article or substance found in the place of work which he has power to enter, and of the atmosphere in or in the vicinity of the place of work;
- ~ require any person employed in a place of work in which any of the diseases named in the Third Schedule of the Factories and Machinery Act 1967 or any disease named in any regulation or order made by the Minister under this Act has occurred to be medically examined.
- » Where an officer is of the opinion that a plant or substance has caused or likely to cause a danger to safety and health, he may :-
  - ~ cause it to be dismantled or subjected to any process or test at any convenient place and at such reasonable time as he may appoint, but not so as to damage or destroy it;
  - ~ take possession of it and detain it for so long as is necessary for all or any of the following purposes :



# Enforcement and Investigation

- to examine it and do to it anything which he has power to do;
  - to ensure that it is not tampered with before his examination of it is completed;
  - to ensure that it is available for use as evidence in and proceedings for an offence under this Act .
- » Where an officer is a medical officer he may :-
- ~ carry out such medical examination as maybe necessary for the purposes of his duties; and
  - ~ exercise such other powers as may be necessary.
- » An officer may for the purposes of this section seek the assistance of the police if he has reasonable cause to apprehend any serious obstruction in the execution of his duty.
- » On entering any place of work or residential place, an officer may bring with him any other person duty or any equipment or material required for any purpose.

# Enforcement and Investigation

## **Power of forceful entry and service on occupier of signed copy of list of things seized from premises**

- » An officer may, if it is necessary to do so :-
  - ~ break open any outer or inner door of a place of work or residential place and enter there into;
  - ~ forcibly enter the place and every part thereof;
  - ~ remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect; and
  - ~ detain every person found in the place until the place has been searched.
- » The officer seizing any article, thing, book, document, plant, substance, installation or part thereof shall prepare a list of the things seized and deliver a copy of the list signed by him to the occupier, or his agent or servant present in the premises, and if the premises are unoccupied the officer shall, wherever possible, post a list of the thing seized on the premises.

# Enforcement and Investigation

## Further provisions in relation to inspection

- » Upon entering any place of work an officer shall take all reasonable steps to notify the employer and the safety and health committee of the entry.
- » Upon concluding an inspection, an officer shall give to the employer and the safety and health committee information with respect to his observations and any action he proposes to take in relation to the place of work.
- » Where an officer proposes to take and remove a sample from a place of work for the purposes of analysis, he shall notify the employer and the safety and health committee and after having taken the sample he shall where possible :-
  - ~ divide the sample taken into as many parts as are necessary and mark and seal or mark and fasten up each part in such a manner as its nature will permit;

# Enforcement and Investigation

- ~ if required by the employer or the safety and health committee, deliver one part each to the employer or the safety and health committee;
- ~ retain one part for future comparison; and
- ~ if an analysis of the sample is to be made, submit another part to an analyst for analysis.

## **Power of investigation**

- » An officer shall have the power to investigate the commission of any offence under this Act.
- » An officer may exercise the special powers in relation to police investigation except that the power to arrest without warrant given by the Criminal Procedure Code in any sizable offence may not be exercised by him.
- » Upon completion of his investigation, the officer shall give all information relating to the commission of the offence to a police officer in charge and the police officer may, by warrant, arrest any person who may have committed an offence under this Act.

# Enforcement and Investigation

## Power to examine witnesses

- » An officer making an investigation may examine orally any person who appears to him to be acquainted with the facts and circumstances of the case.
- » The person referred to shall be legally bound to answer all questions relating to the case put to him by the officer :
  - ~ provided that the person may refuse to answer any question if the officer fails or refuses on demand to produce to him the certificate of authorisation issued by the Director General to the officer;
  - ~ provided further that the person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.
- » A person making a statement under this section shall be legally bound to state the truth whether or not the statement is made wholly or partly in answer to questions.

# Enforcement and Investigation

- » An officer obtaining information from a person shall first inform the person of the provisions.
- » A statement made by a person under this section shall be reduced into writing and signed by him or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish.
- » Where an officer uses the assistance of an interpreter, any inquiry or requisition to a person made on behalf of the officer by the interpreter shall be deemed to have been actually made by the officer, and any answer thereto made to the interpreter shall be deemed to have been actually made to the officer.
- » The owner or occupier of, or employer at, any place of work and the agent or the employee of the owner, occupier or employer shall provide such assistance as the officer may require for any entry, inspection, examination or inquiry or for the exercise of his powers under this Act.

# Enforcement and Investigation

## Offences in relation to inspection

- » A person who :-
  - ~ refuses access to a place of work to an officer or a person assisting him
  - ~ obstructs the officer, or induces or attempts to induce any other person to do so;
  - ~ fails to produce any document required under this Act by the officer;
  - ~ conceals the location or existence of any other person or any plant or substance from the officer;
  - ~ prevents or attempts to prevent any other person from assisting the officer; or
  - ~ hinders, impedes or opposes the officer in the exercise of his powers under this Act or any regulation made there under,
- » On conviction, be liable to a fine not exceeding RM10,000 or to imprisonment not exceeding one year or both.

# Enforcement and Investigation

## Improvement notice and prohibition notice

- » If an officer is of the opinion that a place of work, plant, substance or process is likely to be a danger, cause bodily injury, is a serious risk to health or cause damage to any property, he shall serve an improvement notice on the person who controls the place, requiring the person to take measures to remove the danger within such period and in every such case the place of work, plant, substance or process shall not be used or operated even after the period of expiry of the notice until the danger has been removed.
- » If an officer is of the opinion that the defect is likely to cause immediate danger to life or property, he shall serve a prohibition notice prohibiting the use or operation of the place of work, plant, substance or process until such time that any danger posed is removed.



# Enforcement and Investigation

- » An improvement notice or a prohibition notice shall :-
  - ~ state that the officer is of the opinion that there is occurring or may occur an activity which is likely to be a danger or to cause bodily injury or a serious risk to health or to cause damage or to cause immediate danger to life or property, and state the reason for the opinion; and
  - ~ where in the officer's opinion the activity concerned is a contravention or is likely to be a contravention, specify the provision and state the reasons for the opinion.
- » An officer may include in an improvement notice or a prohibition notice directions as to the measures to be taken to remove any danger, likely danger, risk, matter or activity to which the notice relates and the directions may refer to any approved industry code of practice.
- » An officer may proceed to render inoperative the place of work, plant, substance or process by any means he may deem best suited for the purpose.

# Enforcement and Investigation

- » An officer may, if he deems fit, recover the cost of the action from the occupier or person having responsibility or control of the place of work, plant, substance or process.
- » On conviction, be liable to a fine not exceeding RM50,000 or to imprisonment not exceeding five years or both and to a further fine of RM500 per day during which the offence continues.
- » A person who is aggrieved may appeal to an appeal committee within 30 days from the date of the decision.

# Liability for Offense

- » Penalty for person contravenes this section is fine not exceeding RM 10,000 or to imprisonment for a term not more than one year and in the case of a continuing offence, to a fine not exceeding RM 1,000 for every day or part of a day during which the offence continues after conviction.
- » Every person who at the time of the commission of the offence is a director, manager, secretary or other like officer of the body corporate shall be deemed to have contravened the provision and may be charged jointly in the same proceedings with the body corporate and shall be deemed to be guilty of the offence.
- » A person may be proceeded against and convicted whether or not the corporation has been proceeded against or has been convicted.

# Liability for Offense

## **Offences committed by trade union**

- » Every officer, employee and person purporting to act on the instruction of any officer of the trade union shall be deemed to have contravened the provision and may be charged jointly in the same proceeding with the trade union and shall be deemed to be guilty of the offence.
- » A person may be proceeded against and convicted whether or not the trade union has been proceeded against or has been convicted.

## **Offences committed by agent**

- » A person who would be liable under this Act to any penalty for anything done or omitted if the thing had been done or omitted by him personally shall be liable to the same penalty if the thing had been done or omitted by his agent.

# Liability for Offense

## Defense

- » It shall be a defense in any proceedings against a person for an offence under this Act to satisfy the court that the offence was committed without his consent or connivance and that he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

## Body corporate or trade union liable to fine

- » Where a person convicted in respect to an offence under this Act is a body corporation or a trade union, it shall only be liable to the imposition of a fine provided there for.

## Aiding and abetting

- » A person who aids or abets the commission of an offence under this Act shall be punished with the punishment provided for the offence.

# Liability for Offense

## **Safeguards against further personal liability**

- » No person shall incur any personal liability for any loss or damage caused by any act or omission by him in carrying out the duties under this Act, unless the loss or damage was occasioned intentionally or through recklessness or gross negligence.

## **Onus of proving limits of what is practicable**

- » In any proceedings for an offence under this Act consisting of a failure to comply with a duty or requirement to do something so far as is practicable, it shall be for the accused to prove that it was not practicable to do more than was in fact done to satisfy the duty or requirement.

## **Prosecutions**

- » Prosecutions in respect of offences committed under this Act may, with the prior written consent of the Public Prosecutor, be instituted and conducted by an occupational safety and health officer or by an officer specially authorized in writing by the Director General subject to the provisions of the Criminal Procedure Code.

# Liability for Offense

## Compounding of offences

- » The Minister may, by order in the Gazette, prescribe any offence under this Act as an offence which may be compounded.
- » The Director General may at any time before conviction compound any of the offences as an offence which may be compounded by collecting from the person reasonably suspected of having committed the offence a sum of money not exceeding the amount of the maximum fine to which the person would have been liable to if he had been convicted of the offence :

Provided that the Director General shall not exercise his powers unless the person in writing admits that he has committed the offence and requests the Director General to deal with the offence.

## OSH (Employers' Safety and Health General Policy Statements) Regulations 1995

- Every employer and self employed person must develop a Safety and Health **POLICY**
- Exception : less than 5 employees



## OSH (Control of Industrial Major Accident Hazards) Regulations 1996- CIMAH

- Part 1: Preliminary
- Part 2: Identification and notification of an industry activities
- Part 3: Demonstration of safe operation for non-major hazard installation
- Part 4: Report on industrial activity and preparation of emergency plan for major hazard installation
- Part 5: Notification of major accident
- Part 6: Penalty

# OSH (Safety and Health Committee) Regulations 1996-SHC

- Part 1: Preliminary
- Part 2: Composition of safety and health committee
- Part 3: Functions of safety and health committee
- Part 4: Meetings of safety and health committee
- Part 5: Provisions of training and information
- Part 6: Penalty

# OSH (Classification, Packaging and Labelling of Hazardous Chemicals) Regulations 1997- CPL

1. Citation and commencement
2. Interpretation
3. Application
4. Duty of supplier to classify
5. Packaging requirements
6. Seal of package
7. Labeling
8. Dimension of label
9. Duty of supplier to furnish Chemical Safety Data Sheet
10. Confidential information on chemical

# OSH (Safety and Health Officer) Regulations 1997

- Part 1: Preliminary
- Part 2: Registration of a safety and health officer
- Part 3: Notification of a safety and health officer
- Part 4: Duties of an employer
- Part 5: Duties of safety and health officer
- Part 6: Miscellaneous

## OSH(Safety and Health Officer) Order 1997

- Citation and commencement
- Interpretation
- Class or description of industries required to employ safety and health officer. Examples:
  - a) Any work of engineering construction where the total contract price of the project exceeds RM20 Millions.
  - b) Any gas processing activities or petrochemical industries employing more than a hundred employees

# OSH (Prohibition of Use of Substance) Order 1999

- Citation and commencement
- Prohibition of use of substance

4-aminodiphenyl; benzidine;2-naphthylamine; 4-nitrodiphenyl; their salt & substance exceeding 0.1%	Manufacture and use for all purposes including any manufacturing process in which a substance described in column (1) is formed, except for research or analytical purposes	To prevent cancer
White phosphorus	Use in the manufacture of matches	Chronic phosphorus poisoning (osteomyalitis of the jaw bone)
Benzene	Cleaning and degreasing purposes	Human carcinogen
Carbon disulphide; carbon tetrachloride and n-hexane	Cleaning and degreasing purposes	Damage to nervous system Liver or kidney narcosis Damage to peripheral nerves
Crocidolite	All purposes except for research or analytical purposes	Lung cancer and mesothelioma



## OSH (Use & Standards of Exposure of Chemicals Hazardous to Health) Regulations 2000

- Part 1: Preliminary
- Part 2: Identification of chemical hazardous to health
- Part 3: Permissible exposure limit
- Part 4: Assessment of risk to health
- Part 5: Action to control exposure
- Part 6: Labeling and Re labeling

# OSH (Use & Standards of Exposure of Chemicals Hazardous to Health) Regulations 2000

- Part 7: Information, instruction and training
- Part 8: Monitoring of exposure at the place of work
- Part 9: Health Surveillance
- Part 10: Medical removal protection
- Part 11: Warning sign
- Part 12: record keeping



# OSH (Notification of Accident, Dangerous Occurrence, Occupational Poisoning and Occupational Disease) Regulations 2004

- Part 1: Preliminary
- Part 2: Notification and reporting of a accident, dangerous occurrence, occupational poisoning and occupational disease
- Part 3: No interference at accident or dangerous occurrence scene
- Part 4 : Maintenance of all records of a accident, dangerous occurrence, occupational poisoning and occupational disease
- Part 5: Miscellaneous

## Functions of the DOSH

1. To study and review the policies and legislations of occupational safety and health.
2. To **enforce** the following legislations :
  - a) Occupational Safety and Health Act 1994 and its regulations
  - b) Factories and Machinery Act 1967 and its regulations.
  - c) Part of Petroleum Act 1984 (Safety Measures) and its regulations.
3. To conduct research and technical analysis on issues related to occupational safety and health at the workplace
4. To carry out promotional and publicity programs to employers, workers and the general public to foster and increase the awareness of occupational safety and health
5. To provide advisory service and information to government and private agencies pertaining to management and technical aspects of occupational safety and health
6. To become a **secretariat** for the National Council regarding occupational safety and health

# Other relevant Acts



# References

- Ministry of Human Resources Malaysia.
- Department of Occupational Safety and Health (DOSH) Malaysia.
- Occupational Safety and Health Act (OSHA) and Regulation, MDC Publishers Sdn. Bhd, 2008 Edition.
- Factories and Machinery Act with Regulations, MDC Publishers Sdn. Bhd, 2005 Edition.
- NIOSH Training Module, 2008.