



ADMINISTRATIVE REPORT

October 2009 – September 2010

**OCCUPATIONAL SAFETY AND HEALTH AUTHORITY AND AGENCY
ADMINISTRATIVE REPORT**

**OCCUPATIONAL SAFETY AND HEALTH AUTHORITY AND AGENCY
ADMINISTRATIVE REPORT**

Date: Monday 13, February 2012

Honourable Errol McLeod
Minister of Labour and Small and Micro Enterprise Development
Ministry of Labour and Small and Micro Enterprise Development
Waterfront Towers, Wrightson Road
Port-of-Spain

Dear Honourable Minister:

Re.

Administrative Report:

Occupational Safety and Health Authority and Agency

October 2009 – September 2010

In accordance with the requirements of Section 66D of the Constitution I hereby submit the Report of the Occupational Safety and Health Authority and Agency for the period October 2009 – September 2010.

Yours faithfully,



Dr. Carol Bhagan Khan
Chairman
Occupational Safety and Health Authority

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OCCUPATIONAL SAFETY AND HEALTH AUTHORITY AND AGENCY

The **Occupational Safety and Health Authority** is a multi stakeholder advisory body for the Minister of Labour and Small and Micro Enterprise Development (MLSMED), established October 2006 on the basis of the Occupational Safety and Health Act 2004 as amended, (OSH Act).

The core task of the Authority is to encourage the enforcement of the OSH Act, to promote training, research, information and to approve Codes of Practice.

The **OSH Agency** is the executive arm of the OSH Authority, and also a Statutory Body of the MLSMED. The Agency is responsible for carrying out enforcement, promotional activity and other functions, under the Authority.

The **Mission** of the OSH Authority and OSH Agency (OSHA) is:

*To ensure an environment that leads to safe and healthy workplaces throughout
Trinidad and Tobago.*

OSHA'S Vision:

*The Occupational Safety and Health Authority & Agency (OSHA) will be a highly
respected and reliable organisation, achieving world-class safety and health
standards, with committed professional staff, comprehensive enforcement,
education and advisory programmes, all supported by edge tools and technologies,
and by strategic partnerships.*

OSHA'S Core Values:

Integrity, Accountability, Professionalism, Commitment

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1.0 CHAIRMAN'S SUMMARY

In the budget year 2009 – 2010 the Occupational Safety and Health Agency (OSHA) sought to take measures aimed at:

1. Reducing serious/critical accidents by 10%
2. Reducing fatalities to 2.0 per 100, 000
3. Increasing the number of industrial establishments having occupational health programmes by 10%.

Industrial establishments were monitored to ascertain the degree of compliance with ten (10) key performance areas. This initiative for monitoring compliance commenced in 2008.

The data revealed a relatively high level of compliance with the requirements for the period under review.

An intensive public sensitisation programme regarding duty holders' responsibility to report accidents seemed to have had the desired effect as there were 904 accident reports, of which 61% were investigated. These included six (6) fatalities and thirty three (33) serious accidents. The statistics reflected a 60% and 27% decrease respectively, when compared with the 15 fatalities and 45 serious accidents reported for the last budget year.

The severity rate for fatalities for 2009 – 2010 was 1.0 per 100,000; this was an improvement from 2.5 per 100,000 for the period 2008 – 2009. The decrease exceeded expectations as the target was set at 2.0 per 100,000.

With respect to compliance with the major requirements of the OSH Act, it was noted that after conducting re-inspections 22% of the establishments achieved a compliance rate of between 76% to 100% percent. Thirty-five (35%) achieved a compliance rate between 51% to 75% and forty-three (43%) achieved a compliance rate of below 50 %.

In the coming budget year considerable effort will be directed to achieving a 10% improvement in the compliance rate of each of the re-inspected establishments.

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With respect to enforcement of the OSH Act, thirty one (31) cases were being considered by the Legal Unit for possible prosecution. Also, four (4) prohibition and (2) improvement notices were issued.

One hundred percent (100%) of all complaints were investigated. The target to investigate 95% of prioritized complaints across all sectors was therefore surpassed.

Table 1 Key Figures for 2009 - 2010

Some key figures for 2009/2010	
HUMAN RESOURCES	
INSPECTORS OCTOBER 1, 2009	37
INSPECTORS OCTOBER 1, 2010	37
ENFORCEMENT ACTIVITIES	
INSPECTIONS CARRIED OUT	260
ACCIDENT INVESTIGATIONS COMPLETED	485
COMPLAINTS INVESTIGATED	304
PROMOTIONAL LECTURES PROVIDED	218
RECOMMENDATION LETTERS	547
IMPROVEMENT NOTICES	2
PROHIBITIONS	4
PROSECUTIONS FILED	2
STRATEGIC PARTNERSHIPS	
MEMORANDA OF UNDERSTANDING	13

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2.0 BRIEF HISTORY AND PROFILE OF THE OCCUPATIONAL SAFETY AND HEALTH AUTHORITY (OSH AUTHORITY)

The Authority consists of a Chairman and sixteen (16) other Members. The Minister of Labour and Small and Micro Enterprise Development (“MLSMED”) appoints the Chairman and Deputy Chairman of the Authority. Other members are appointed by relevant bodies and organisations.

Composition of the Authority

- Chairman
- Deputy Chairman
- Executive Director
- A representative of the Ministry responsible for occupational safety and health
- A representative of the Ministry responsible for health
- A representative of the Ministry responsible for energy industries
- A representative of the body responsible for standards in Trinidad and Tobago
- A representative of the Tobago House of Assembly
- Nine other members appointed by the Minister:
 - two representing employees
 - two representing employers
 - five on the advice of the Medical Board of Trinidad and Tobago, the Board of Engineering and organizations representing women’s affairs.

By Cabinet Minute No. 1739 of July 13, 2006, Cabinet **agreed** to the appointment of persons to the OSH Authority as in accordance with the provisions of Section 65 of the OSH Act. Seventeen persons were appointed for a period of three years. In July 2009, the term of appointment came to an end and the OSH Agency was left without an OSH Authority until October 2010.

All members of the current Authority were formally sworn in by His Excellency the President on October 29, 2010. The Authority holds Meetings in accordance with Schedule 2 of the Occupational Safety and Health Rules. Table 2 lists the members of the Authority for the period extending October 01, 2007 to September 30, 2010 and the new Authority appointed on October 2010.

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**OCCUPATIONAL SAFETY AND HEALTH AUTHORITY
AUTHORITY MEMBERSHIP**

Table 2 Authority Membership

No.	Name	Representative	Position	Date of Appointment	Date of Expiration	Remarks
Chairman						
1.	Arlene Chow		Chairman	October 13, 2006	October 12, 2009	Resigned with immediate effect from October 13, 2006
2.	Wayne Bertrand		Chairman	January 18, 2007	January 17, 2010	Cabinet Minute No. 64 of January 2007
3.	Dr. Carol Bhagan-Khan		Chairman	October 29, 2010	October 28, 2013	Cabinet Minute No. 1180 of October 2010
Deputy Chairman						
4.	Finbar McEachnie		Vice Chairman	October 13, 2006	October 12, 2009	Resigned November 30, 2007
5.	Ryan Ramjit		Vice Chairman	August 12, 2008	August 12, 2011	Cabinet Minute No. 1665 of June 20, 2008
MLSMED						
6.	Devnath Roopnarine	MLSMED	Member	October 13, 2006	October 12, 2009	Replaced August 2008
7.	Brahma Beharrysingh	MLSMED	Member	August 12, 2008	August 12, 2011	Cabinet Minute No. 1665 of June 20, 2008
8.	Avril Rahim	MLSMED	Member	October 29, 2010	October 28, 2013	
Ministry of Health						
9.	Dr. Rohit Doon	Chief Medical Officer	Member	October 13, 2006	October 12, 2009	
10.	Dr. Mutchinson Melville	Chief Medical Officer	Member	October 29, 2010	October 28, 2013	

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No.	Name	Representative	Position	Date of Appointment	Date of Expiration	Remarks
Ministry of Energy and Energy Affairs						
11.	Ian Ramdahin	MOEEA	Member	October 13, 2006	October 12, 2009	
12.	Indira Ramkissoon	MOEEA	Member	October 29, 2010	October 28, 2013	
TTBS						
13.	Prem Nandlal	TTBS	Member	October 13, 2006	October 12, 2009	Resigned November 30, 2007
14.	Deryck Omar	TTBS	Member	August 12, 2008	August 12, 2011	Cabinet Minute No. 1665 of June 20, 2008
EMA						
15.	Gayatri Badri Maharaj	EMA	Member	August 12, 2008	August 12, 2011	Resigned August 25, 2008
16.	Dr. Joth Singh	EMA	Member	October 29, 2010	October 28, 2013	
Employers' Representatives						
17.	Ryan Ramjit	South Chamber of Industry and Commerce	Member	October 13, 2006	October 12, 2009	Appointed as Deputy
18.	Johnson Alexander	TTMA	Member	October 13, 2006	October 12, 2009	
19.	Vincent Cabrera			August 12, 2008	August 12, 2011	Resigned October 27, 2010
20.	Sydney Sears	Energy Chambers	Member	October 29, 2010	October 28, 2013	
Employees' Representatives						
21.	Michael Annisette	National Trade Union Centre of Federated Workers	Member	October 13, 2006	October 12, 2009	Replaced, August 2008
22.	Chandrasain Ramsingh	OWTU	Member	October 13, 2006	October 12, 2009	
23.	Martin Cabrera	FITUN	Member	October 29,	October 28,	

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No.	Name	Representative	Position	Date of Appointment	Date of Expiration	Remarks
				2010	2013	
24.	Dennison Poon	NATUC	Member	October 29, 2010	October 28, 2013	
General purpose						
25.	Dr. Neil Adrian Singh	Medical Board of T&T	Member	October 13, 2006	October 12, 2009	
26.	Dr. Terrence Seemungal	Medical Board of T&T	Member	October 29, 2010	October 28, 2013	Resigned December 2010
27.	Lennox S.C. Findlay	Safety Council of T&T	Member	October 13, 2006	October 12, 2009	
28.	David St. Clair	Safety Council of T&T	Member	October 29, 2010	October 28, 2013	
29.	Alfred Phillips	Board of Engineering	Member	October 13, 2006	October 12, 2009	
30.	Alfred Phillips	Board of Engineering	Member	October 29, 2010	October 28, 2013	
31.	Carol Noel	The Network of NGO of T&T for the Advancement of Women	Member	October 13, 2006	October 12, 2009	
32.	Folade Mutota	The Network of NGO of T&T for the Advancement of Women	Member	October 29, 2010	October 28, 2013	
33.	Gladstone Solomon	THA	Member	October 13, 2006	October 12, 2009	
34.	Gladstone Solomon	THA	Member	October 29, 2010	October 28, 2013	

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3.0 STRATEGIC PLAN

The period 2009 – 2010 provided OSHA the opportunity to address the major issues identified in the Operational Plan 2010, as a part of the five year strategic plan 2008 – 2012. **APPENDIX 4 – OSHA’ S M ulti Annual Strategic Plan (2008-2012).**

Table 3 OSHA Core Objectives

OSHA CORE OBJECTIVES	
2.Balancing of compliance techniques	Conducted 2600 inspections.
	Reduction in severity rate of fatalities to 1.0 per 100,000.
	Inspection Work Plan 2009/10 was developed, targeting high-risk/high impact sectors and known offenders as priority.
4.Negotiating Strategic Relationships	13 Draft Memoranda of Understanding with other (regulatory) organisations being finalised
	PSIP-OSHA Education in schools
	Development of the Safety and Health Culture project with the Ministry of Labour and Small and Micro Enterprise Development (MLSMED)
7.Establish Comprehensive Practices	Regulations and Codes of Practice were drafted according to an agreed priority schedule
	Completed review and amendment of LOLER Regulations
8.Build Public Awareness	Safety Awards 2010 were presented and Safety Week 2010 activities took place
	Preparation and planning of a Construction Symposium to be hosted in January 2011
	Public awareness Seminars were conducted to sensitise stakeholders on compliance and implementation of the OSH Act
9.Collect Quality Information	Continued communication with NIB and with UTT/OSHE, UWI and data providers.

4.0 FINANCIAL OPERATIONS

Financial year 2009/2010

The OSH Agency continued to be a project under the MLSMED, for budgetary and financial purposes.

Since October 2009, with the absence of a quorum for the Authority, the Permanent Secretary (PS) of the Ministry has been acting as Accounting Officer the OSH Agency and assumed responsibility for the Agency's expenditure. The authority to sign certain documents on behalf of the PS was delegated to two full time employees of the OSH Agency. The Agency is required to seek the approval from the PS a month in advance for all expenditure. Prior to this, the Executive Director (ED) and the Authority exercised financial control over funds allocated to the OSHA.

The absence of an Authority has created its peculiar challenges requiring the Chairman, the PS and the Minister to assume responsibility for the operations of the Agency. In the absence of an Authority matters relating to the hiring of staff on contracts of service and contracts for service, required approval by the Minister and the Chairman and in his absence, the Deputy Chairman.

The requirement for the PS's financial authority is likely to continue until an ED is appointed as the Accounting Officer. The ED is also a member of the Authority.

APPENDIX 3 – Financial Statements for the period October 2009 – September 2010

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5.0 ORGANISATIONAL STRUCTURE

A Note was submitted to Cabinet in 2009 and Cabinet by Minute No. 2608 of September 17, 2009 agreed *inter alia*

- (a) to grant covering approval for the establishment of the **interim** structure of the OSH Agency comprising of 67 contract positions in respect of the period August 17, 2007 to October 31, 2009;
- (b) to grant covering approval for the employment, on contract, of persons against the 67 positions referred to at (a) above from August 17, 2007 to October 31, 2009, on terms and conditions to be negotiated with the Chief Personnel Officer and approved by the Minister of Labour and Small and Micro Enterprise Development and, where applicable, determined by the PSNC;
- (c) to approve a **new** structure for the OSH Agency comprising 152 contract positions as set out in Appendix IV to the comments of the Minister of Public Administration with effect from November 1, 2009;
- (d) to the employment, on contract, of staff to fill the 152 positions referred to in (c) above for a period of three (3) years with effect from the dates of assumption of duty, on terms and conditions to be negotiated with the Chief Personnel Officer and approved by the Minister of Labour and Small and Micro Enterprise Development and, where applicable, determined by the Public Sector Negotiations Committee.

Comparison of the new organisational structure with the interim structure reveals the following:

- (a) seven (7) senior level positions in the interim structure were omitted from the new organisational structure. These were as follows:
 - Senior Legal Advisor
 - Supervisor Administrative Services
 - Human Resource Coordinator
 - Finance Coordinator
 - Research Development and Planning Coordinator

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- IT Coordinator
 - Technical Advisor
- (b) four (4) professional/support level positions in the interim structure were omitted from the new organisational structure. These were as follows:
- Communication Assistant
 - Small Business Specialist
 - Training and Development Officer
 - Human Resource Assistant
- (c) three (3) executive level positions, introduced within the new organisational structure were:
- Deputy Director – Legal
 - Deputy Director – Technical
 - Deputy Director – Administration
- (d) nine (9) senior/managerial level positions, introduced within the new organisational structure were:
- Specialist Medical Inspector II (1)
 - Secretary to the Board (1)
 - Specialist Technical Coordinator (1)
 - Administrative Services Manager (1)
 - Human Resource Manager (1)
 - Finance Manager (1)
 - Communications and Outreach Manager (1)
 - IT Project Manager (1)
 - Research Development and Planning Manager (1)
- (e) six (6) professional/support level positions introduced within the new organisational structure were:
- Hygiene Inspector (6)
 - Information Technology Systems Analyst (1)
 - Planning Officer (1)

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- Communications Specialist (3)
- Human Resource Officer (1)
- Hotline Operator (1)

Re-designation of Positions

The following positions were re-designated as follows:

Interim Organisational Structure	New Organisational Structure
Accounting Assistant	Accounting Officer
Clerk/Registry Officer	Clerk/Registry Assistant
Assistant Corporate Secretary	Assistant Secretary to Board

In light of Cabinet's decision that positions in the interim structure would cease to exist on **October 31, 2009**, the OSH Authority terminated the contracts of the incumbents in those positions. These individuals were encouraged to apply for suitable positions in the new organisation which were commensurate with their qualifications and experience.

The terminated employees were entitled to a pro-rated gratuity, equivalent to twenty (20) percent of the gross salary earned from the date of assumption to October 31, 2009 and payment for any unutilized leave (if applicable). They have since been paid their unutilised vacation leave and the processing of their gratuity payment is currently being addressed.

APPENDIX 1 – Organisational Structures

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6.0 ACTIVITIES OF THE AGENCY

Enforcement was carried out in accordance with the Agency's Enforcement Policy. In the 2009 – 2010 financial year, 904 accidents were reported. Of these 904 accidents 61.0 % (551 accidents) were investigated. In the budget year 2009/2010, six (6) fatalities were reported, 2 (33.3%) of which took place in the Construction Sector, 2 (33.3%) in the Manufacturing Sector and 2 (33.3%) in the Agriculture and Services Sector.

Since the establishment of the Agency in 2007, this is the lowest number of fatalities recorded. The number of fatalities recorded in the 2007/2008 and 2008/2009 budget years was 9 and 15 respectively. As a result of the 6 fatalities recorded for the 2009/2010 budget year, the severity rate for fatalities for the year stands at 1.0 per 100, 000.

The OSH Authority and Agency co- sponsored BITS/ SIRENS 2009, which took place from October 8 – 11, 2009 at the Centre of Excellence, Macoya. The exhibition took on a new format in that its focus shifted from construction and other building materials but to encompass a Health, Safety Security and Environmental exhibition and Symposium. The theme was “success through professional development”. OSHA participated via a booth display, dissemination of brochures and pamphlets as well as the delivery of lectures and workshops.

Public awareness Seminars were held in September. The purpose of these Seminars was to sensitise stakeholders on compliance with and implementation of the OSH Act. The target group consisted of senior government officials, CEO's of state companies, Union members and the Tobago House of Assembly.

National Safety Week took place from April 26th to April 30th 2010. The Health and Safety week and awards continue to be a major annual event that engages multi-stakeholders in partnering with the OSH Agency to evaluate the adherence to OSH standards.

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7.0 BREACHES OF THE OSH ACT

The Authority under the OSH Act has within the last three years taken one (1) matter to the Industrial Court for breach of:

- Section 6 – General Duties of Employers and
- Section 13 - Risk Assessment

OSH Authority –v- N&S Electrical Company Limited

The Authority was successful in the above matter; please see **APPENDIX 6 - Judgment**

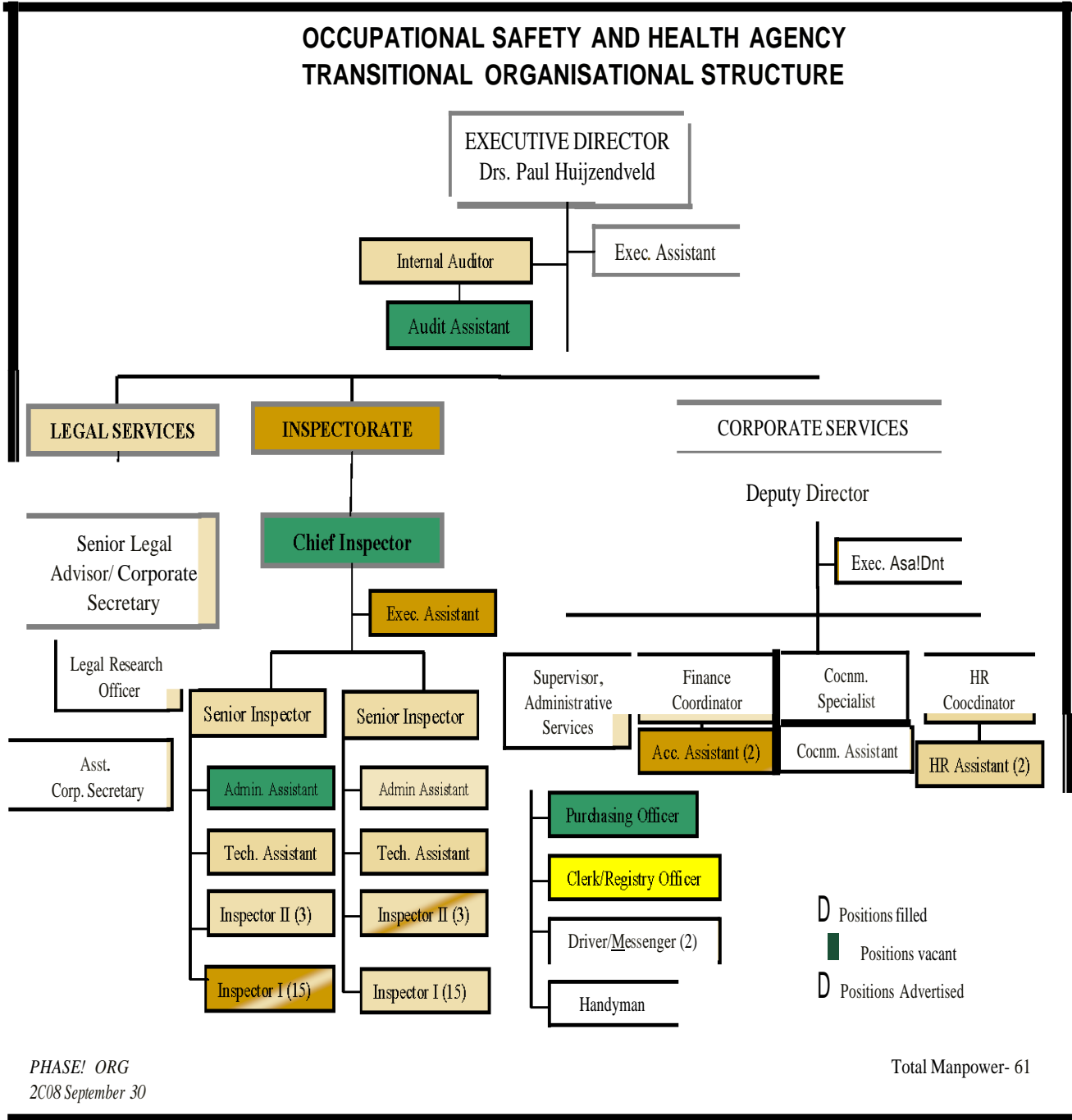
Appendix 1

ORGANISATIONAL STRUCTURE

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As of September 30th 2008, the OSH Agency employed sixty one (61) staff members made up of thirty eight (38) Inspectors (excl. the Senior Inspector performing the duties of Chief Inspector) and twenty three (23) supporting staff.

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Appendix 2

PROPOSED ORGANISATIONAL STRUCTURE

Appendix 3

FINANCIAL STATEMENT

**Statement of Releases received and
Expenditure incurred**

For the Year ended September 2010

Table 4 Expenditure Summary for the Period Oct. 2009- Sept. 2010

SUB-ITEM		EXPENDITURE (\$)
	015 Establishment of OSHA	
	SUB HEAD:09- Development Program	
	06- General Public Services	
	A- Administrative Services	
	ITEM: 005 Multi Sectoral & Other Services	
	PROJECT: Establishment of the Occupational Safety and Health Authority and Agency	2,349,598.00
	GRAND TOTAL	2,349,598.00

Table S Recurrent Expenditure Summary for the Period Oct. 2009 - Sept. 2010

SUB-ITEM	SUB HEAD,Q2-GOODS & SERVICES	EXPENDITURE (\$)
01	Travelling	-
04	Electricity	764,151.00
05	Telephones	488,046.00
06	[water and Sewerage Authority	6,399.00
08	Rent:Accommodation	-
09	Rent:Equipment & Vehicles	50,712.00
10	Office Stat & Supplies	161,284.00
11	Books & Periodicals	29,315.00
12	Materials & Supplies	117,328.00
13	Maintenance of Vehicles	36,664.00
15	Rep & Maint of Equipment	21,994.00
16	Contract Employment	11414,021.00
17	Training	127,180.00
21	Repairs and Maintenance of Buildings	41,200.00
22	Short Term Employment	8,940.00
23	Fees	617,827.00
27	Official Overseas Travel	32,379.00
28	Other Contracted Services	850,721.00
37	Janitorial Services	191,295.00
43	Security Services	692,283.00
57	Postage	6,502.00
58	Medical Expenses	-
61	Insurance	6,440.00
62	Prom, Pubcity & Printing	167,246.00
66	Hosting Of Conf. and Seminars	39,921.00

Appendix 4

STRATEGIC PLAN

Appendix 5

ACTIVITIES OF THE OSH AGENCY

Table 6 Breakdown of the Inspection Activities

PERIOD	Activities of the OSH Agency						
	Accident Investigations	Inspections/Audits	Lectures Conducted	EIA Reviews	Complaint Investigations	Meetings	Plans Examined
October 2009	40	300	19	0	49	147	5
November 2009	58	254	11	0	28	117	4
December 2009	42	243	18	0	21	110	6
January 2010	49	230	10	1	11	159	3
February 2010	44	235	21	0	18	159	6
March 2010	50	225	29	0	27	193	7
April 2010	42	156	37	0	14	144	3
May 2010	63	211	21	1	40	105	2
June 2010	47		8				
July 2010	37						
August 2010	47						
September 2010	32						
yearly total for activity	551	2600	218	5	304	1616	44
Activities conducted by the OSH Agency: 5338							

Table 7 Accident Investigations as carried out by OSHA Units

ACTIVITY: Accident Investigations							
PERIOD	Units of the OSH Agency						
	Construction	Manufacturing	Oil and Gas	Health & Hygiene	Petrochemical	Agriculture/ Services	Total for month
October 2009	7	4	3	4	5	17	40
November 2009	3	15	1	3	5	31	58
December 2009	6	11	4	5	1	15	42
January 2010	5	6	5	5	6	22	49
February 2010	12	0	5	6	8	13	44
March 2010	8	6	6	13	6	13	50
April 2010	10	16	5	1	8	3	42
May 2010	7	18	4	19	5	10	63
June 2010	7	8	5	0	2	25	47
July 2010	10	11	2	0	4	10	37
August 2010	2	16	10	4	9	6	47
September 2010	5	7	2	4	5	9	32
yearly total for unit	82	116	52	64	63	174	
Accident Investigations Conducted : GRAND TOTAL = 551							

Table 8 Inspection/Audit Accidents for the Respective OSHA Units

ACTIVITY: Inspections							
PERIOD	Units of the OSH Agency						
	Construction	Manufacturing	Oil and Gas	Health & Hygiene	Petrochemicals	Agriculture/ Services	Total for month
October 2009	58	58	39	43	45	57	300
November 2009	53	56	32	25	28	60	254
December 2009	62	26	35	31	45	44	243
January 2010	69	14	26	36	51	34	230
February 2010	48	22	24	39	52	50	235
March 2010	58	20	34	32	48	33	225
April 2010	33	33	20	17	35	18	156
May 2010	45	38	32	19	51	26	211
June 2010	44	28	30	18	31	44	195
July 2010	47	26	11	12	33	16	145
August 2010	57	25	15	18	37	25	177
September 2010	59	39	31	14	52	34	229
yearly total for unit	633	385	329	304	508	441	
GRAND TOTAL = 2600							

Table 9 Lecture Activities for the Respective OSHA Units

ACTIVITY: Lectures							
PERIOD	Units of the OSH Agency						
	Construction	Manufacturing	Oil and Gas	Health & Hygiene	Petrochemicals	Agriculture/ Services	Total for month
October 2009	2	2	4	2	9	0	19
November 2009	2	4			2		11
December 2009		8	3	0	3	3	18
January 2010	0		2	4	3	0	10
February 2010	2	2	0	9	7		21
March 2010	2	10	2	5	5	5	29
April 2010	3	4	2	10	7	11	37
May 2010	0	0	0	3	14	4	21
June 2010	2		0		3		8
July 2010	2	3	2	2	4	2	15
August 2010				3	3	0	9
September 2010	5	5	0		6	3	20
yearly total for unit	22	41	17	41	66	31	
Lectures Conducted : GRAND TOTAL = 218							

Appendix 6

JUDGEMENT



REPUBLIC OF TRINIDAD AND TOBAGO
APPLICATION NO. OSHA 001/2008

IN THE INDUSTRIAL COURT

IN THE MATTER OF A COMPLAINT
BY THE OCCUPATIONAL SAFETY AND HEALTH AUTHORITY,
(ON BEHALF OF DEXTER DOVER-DECEASED)
IN RESPECT OF THE CONTRAVENTION OF
SECTIONS 6(1), 13A AND 83 (1) OF
THE OCCUPATIONAL SAFETY AND HEALTH ACT, NO.1 OF 2004
(AS AMENDED)
AGAINST N&S ELECTRICAL COMPANY LIMITED

Between

OCCUPATIONAL SAFETY AND HEALTH
AUTHORITY - COMPLAINANT

And

N & S ELECTRICAL COMPANY LIMITED
• RESPONDENT

CORAM

Her Honour Mrs. Heather Seale • Presiding Member
Her Honour Mrs. Lenore Harris • Member

APPEARANCES:

Mr. S. Cazabon)
Mr. W. James)
Attorneys-at-law) - for the Complainant

Ms. K. Persaud)
(Holding for Mr.)
D. Maharaj)
Attorneys-at-law) - for the Respondent

DATED: July 30, 2010

JUDGMENT Delivered by Her Honour Mrs. H. Seale

On May 16, 2008, the Occupational Safety and Health Authority, filed a Complaint on behalf of Dexter Dover ("the Deceased") in respect of the contravention of sections 6 (1),13A and 83 (1) of the *Occupational Safety and Health Act*. No.1 of 2004 (as amended) against N&S Electrical Company Limited ("the Employer"). The Employer is a company engaged by the Trinidad and Tobago Electricity Commission (CT&TEC) for line clearing services.

The Deceased, a thirty-nine year old Tree Trimmer was electrocuted on Thursday May 18, 2006. while at work. He was attempting to cut a tree located within fenced property situated at the corner of Main and Seventeenth B Streets, LP #59, Beetham Estate, Sea Lots It is alleged that a branch of the tree he was attempting to trim came into contact with an overhead high tension 33KV line.

The details of the Complaints are that:-

1. N & S Electrical Company Limited on May 18, 2006, at the corner of Main and 178 Streets, LP# 59, Beetham Estates. Sea Lots, in the County of St. George West, being an employer failed to discharge its duty under section 6(1) of the *Occupational Safety and Health Act*, No. 1 of 2004 (as amended) to ensure as far as is reasonably practicable the safety, health and welfare at work of its employee Dexter Dover. contrary to section 83 (1) of the aforementioned Act.
2. N & S Electrical Company Limited on May 18, 2006, at the corner of Main and 178 Streets. LP# 59. Beetham Estates. Sea Lots, in the County of St. George West being an employer failed to discharge its duty under section 13A of the *Occupational Safety and Health Act*. No. 1 of 2004 (as

amended) to make a suitable and sufficient assessment of the risks to the safety and health of his employees to which they are exposed while at work, contrary to section 83 (1) of the aforementioned Act.

Pursuant to orders of the Court, both parties to the Complaint each filed statements of Evidence and Arguments on September 30, 2009 and the Respondent filed a reply to the Complainant's Evidence and Arguments on October 28, 2009. The Complainant sought redress under section 86 of OSHA and asked the Court to fine the Employer the sum of one hundred thousand dollars (\$100,000.00) or an amount equivalent to 3 years pay of the Deceased (whichever is greater) to be paid for the benefit of the estate of the Deceased.

The matter was set for hearing on June 21 and June 24, 2010. At the hearing on June 21, 2010 it became evident that the Employer was contemplating adopting a particular course and an application for an adjournment to 1.30 p.m. on June 24, 2010 was granted.

On June 24, 2010, prior to the hearing. Attorney-at-law for the Employer filed a document of the said date in which it informed the Court that the Employer agreed that it was liable on both charges brought by the Authority against it. In light of the Employer's formal acceptance of liability the Court was asked to consider the following factors in order to arrive at any decision on sentencing:-

1. *"The death of Dexter Dover while on duty is the only fatality of an employee of Party No. 2 [the Employer] during its ten years of the high risk work of line clearing and maintenance, which Party No. 2 does not wish to occur again. As a result of Party No. 2's plea outlined above, Party No. 2 has agreed with*

- Party No. 1 [the Complainant] to submit to the Chief Inspector of the Agency monthly risk assessment reports for a period of six months from June 24, 2010.*
- 2. Party No. 2 immediately after the death of Dexter Dover showed contrition by supporting the family of the Deceased both in monetary assistance and moral support. In this regard Party No. 2 had paid to the deceased's family a sum in excess of \$161,000.00.*
 - 3. Party No. 2 is a small company whose employees are all skilled labourers in the field of line clearing and maintenance work.*
 - 4. The guilty plea is made before a trial of the charges is ensued upon, thereby saving judicial time and resources.*
 - 5. The charges against Party No. 2 are the first and only charges against it in relations [sic] to committing an offence under the OSH Act, in its ten years of existence."*

At the hearing of the matter, the charges were read to the Managing Director. Mr. Nelson Lalsiew on behalf of the Employer and he entered a guilty plea to both charges on behalf of the Employer, following which Attorney-at-law made an oral plea in mitigation

In her plea Attorney-at-law for the Employer emphasised that the Employer through the Managing Director had provided financial assistance to the family of the Deceased, including assistance with funeral arrangements and had made certain ex-gratia payments for the maintenance of the children without being bound by an order of the Court.!! She indicated that the family had also received in excess of \$10 000 00

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in a lump sum by way of Workmen's Compensation. She stressed that it was a small Company with an average turnover of twenty employees and annual net profits estimated to be in the region of one hundred thousand (\$100,000.00). She indicated that three years salary of the Deceased fell well below the maximum fine. She also asked the Court to consider the usual factors which are taken into account in sentencing

The Court accepted the guilty plea entered by the Managing Director on behalf of the Employer and after hearing Attorney-at-law for the Complainant, reserved its decision under section 86 (1) of OSHA. Section 86 reads as follows:-

"86. (1) Subject to subsections (2) where a person dies, is critically injured or develops an occupational disease in consequence of an employer, occupier or owner having contravened this Act, the employer, occupier or owner shall, without prejudice to any other liability or right of action arising out of the death or critical injury or disease, be liable to a fine of one hundred thousand dollars, or of an amount equivalent to three years pay of that person, whichever is greater, and the whole or part of the fine may be applied for the benefit of the victim or of his estate, or otherwise as the Court may determine.

(2) In the case of an occupational disease, the employer, occupier or owner shall not be liable to a fine under this section unless the disease resulted directly from the contravention."

The Court notes that section 86 (1) deals with liability for critical injury, occupational disease and death. Liability which results in death can arguably be seen as the most serious. In addition, the fine to be imposed in accordance with section 86 (1) is without prejudice to any other liability or right of action arising, in this case, out of death. Of the payments of Over \$161,000.00 made to the family of the Deceased which the Employer has asked us to consider in coming to our decision, the sum of

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\$147,084.00 w.c.s paid to the Registrar of the Supreme Court under the *Workmen's Compensation Act*, Ch. 88:05 and fall to be classified as other liability. However, we do acknowledge the Employer's obligations to provide insurance under the *Workmen's Compensation Act*. Against this background and having regard to the matters raised in the plea in mitigation, the Court is called upon to consider what fine, if any, should be imposed on the Employer.

In *R V F Howe & Son (Engineers) Limited*¹, a case in which, like this one an employee was electrocuted, the Court of Appeal addressed aggravating factors as well as mitigating features in determining an appropriate fine for an offence under the *Health and Safety at Work etc Act, 1974*. Among the mitigating features are:-

- a. Prompt admission of responsibility and a timely plea of guilty;
- b. Steps to remedy deficiencies after they are drawn to the defendant's attention; and
- c. A good safety record.

Other relevant matters that the Court may have regard to are:-

- a. The degree of risk and extent of the danger created by the offence;
- b. The extent of the breach; and
- c. The defendant's resources and the effect of the fine on its business.

The Court said:-

"While it is impossible to lay down any tariff or to say that a fine should bear any specific relationship to the turnover or net profit of the defendant, since the objective of prosecutions for health and safety offences in the workplace is to achieve a safe environment for

¹[1999] 2 All ER 249

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those who work there and for other members of the public who may be affected, a fine needs to be large enough to bring that message home where the defendant is a company not only to those who manage it but also to its shareholders."

The Court's Order

Upon accepting the Employer's guilty plea and after deliberating upon all relevant matters, we order the Employer, N&S Electrical Company Limited to pay a fine of \$45, 000.00 for the benefit of the estate of the Deceased, Dexter Dover. The said fine is to be paid on or before September 1. 2010

Her Honour Mrs. H. Seale
Presiding Member

Her Honour Mrs. L. Harris
Member