Occupational Health and Safety Branch

Service NL

April 2015

Topics

- OHS Division Role and Function
- OHS Responsibilities
- Contract Implications
- Due Diligence Expectations
- Inspection Stats
- Order Stats
- Prosecutions Overview

OHS Enforcement

- 4 offices - 2 regions (Eastern and Western)

- 36 Enforcement Positions:
  - Officer II's – general inspectors
  - Officer III's – sector specific
  - Industrial Hygienists
  - Hazard Materials Officers
  - Ergonomist
  - Engineer
  - Consultant

Legislative Authority

- 26. (1) For the purpose of ensuring compliance with the Act or regulations and an order made under either of them, the assistant deputy minister, or an officer

- (a) may, at a reasonable hour and without prior notification, enter and inspect a workplace, …..

Legislative Responsibility

- 26.2 The owner or operator of a workplace and a person found there shall give the assistant deputy minister or officer reasonable help ..... ……. and shall provide the information that the assistant deputy minister or officer may reasonably require.

Enforcement Tools

- Enforcement tools include:
  - Verbal recommendations
  - Recommendations documented in Officers Report texts
  - Orders
  - Stop Work Orders
  - Registered Letters of Non-Compliance
  - Charges

OHS and the Municipality

- A municipality is an “employer” under the Occupational Health and Safety Act

- Section 4 of the Act - An employer shall ensure, as far as reasonably practical, the health, safety and welfare of his or her workers

Municipality as Employer

- The employer must:
  - Appropriately recognize, evaluate and control hazards
  - Provide, and maintain, the workplace and necessary tools, equipment and systems
  - Provide the necessary information, instruction, training, supervision and facilities
  - Ensure that workers, and especially supervisors, are aware of work related hazards

Municipality as Employer

- How to provide information, instruction and/or training:
  - External training
  - Formal in-services
  - Written policies/procedures
  - Toolbox talks
  - Pre job familiarization with work processes, tools and/or equipment operation

Municipality as Employer

- The employer must:
  - Conduct operations safely
  - Ensure workers are proficient as to needed safety measures
  - Cooperate with the OHS designate, representative or committee
  - Ensure adequate inspections
  - Ensure adequate supervision

Municipality as Employer

- Ensure measures are in place to deal with new information or changes:
  - Inform supervisors and workers of newly identified hazards and/or safety requirements
  - Educate and inform supervisors and workers on:
    - New/changed work processes
    - New/modified tools
    - New/modified equipment

Supervisor responsibilities

- Enhanced supervisor requirements as of 2009
  - More specific responsibilities for ensuring the safety of those they supervise
- Inspections and/or Investigations will check compliance
- Supervisors charged 14 times since 2012

Supervisory Responsibilities

- Supervisors must:
  - Inform workers of safety hazards
  - Provide written and verbal instructions on needed safety measures
  - Ensure workers properly use required PPE
  - Perform workplace inspections
  - Take action when issues are identified
    - New hazards
    - Inadequate safety measures
    - Non-adherence

Shared Responsibility

- **Employer** – must protect workers and others
- **Supervisor** – must protect those they direct or oversee
- **Worker** – must protect self and others
- **Principal contractor** – must ensure all employers they have influence over (contractors) comply with the *OHS Act* and regs to ensure safety of all
  - Town pays for "outside" help
    - *Then* Town = Principle Contractor
    - Outside Entity = Contractor

Municipalities and Contractors

- OHS Act s.10 – Principal Contractor

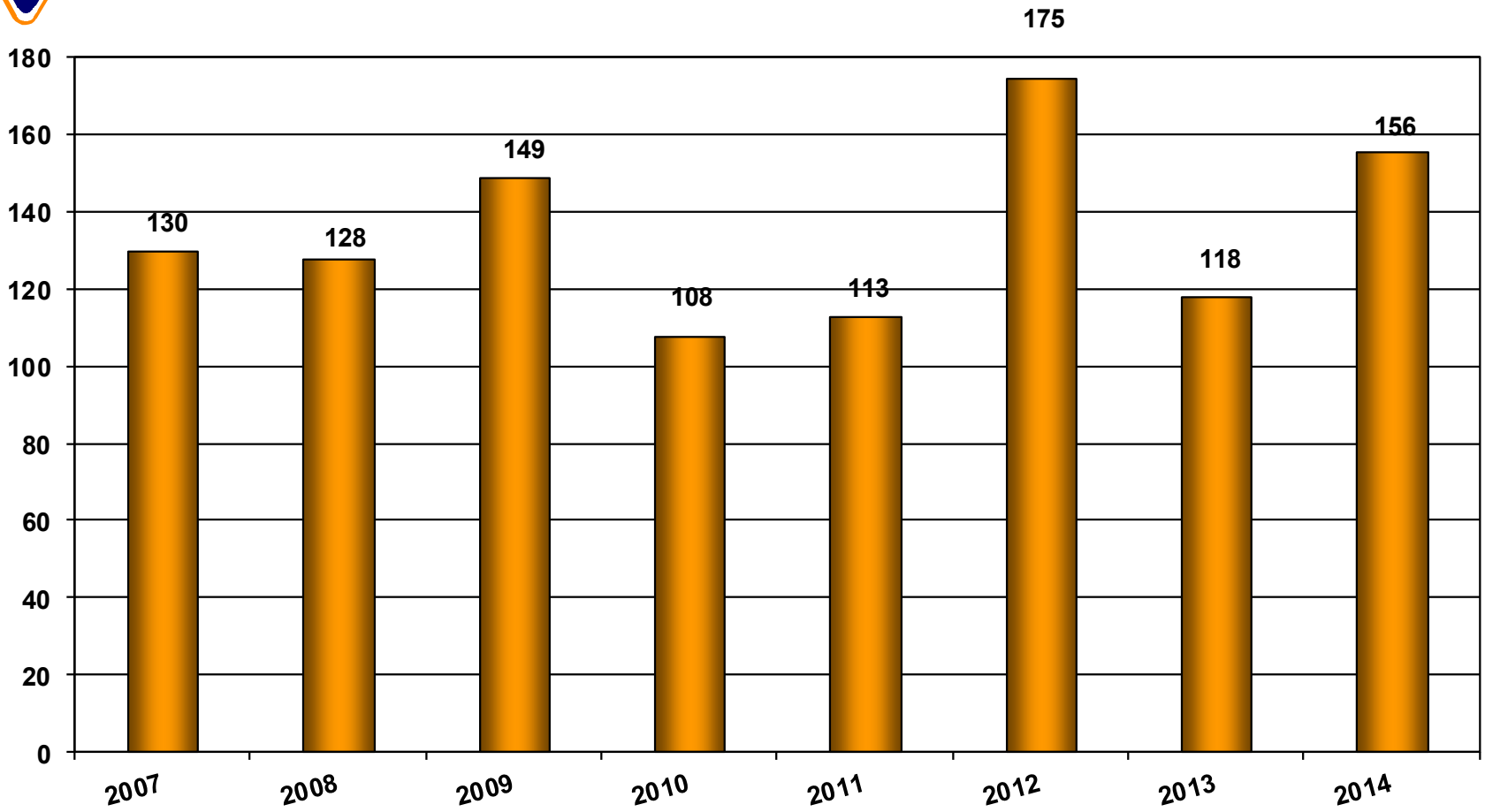
- A principal contractor engaged in a project shall ensure where it is reasonably practicable for him or her to do so, that employers, workers, and self employed persons performing work in respect of that project comply with this Act and the regulations

Due diligence – Principal Contractor

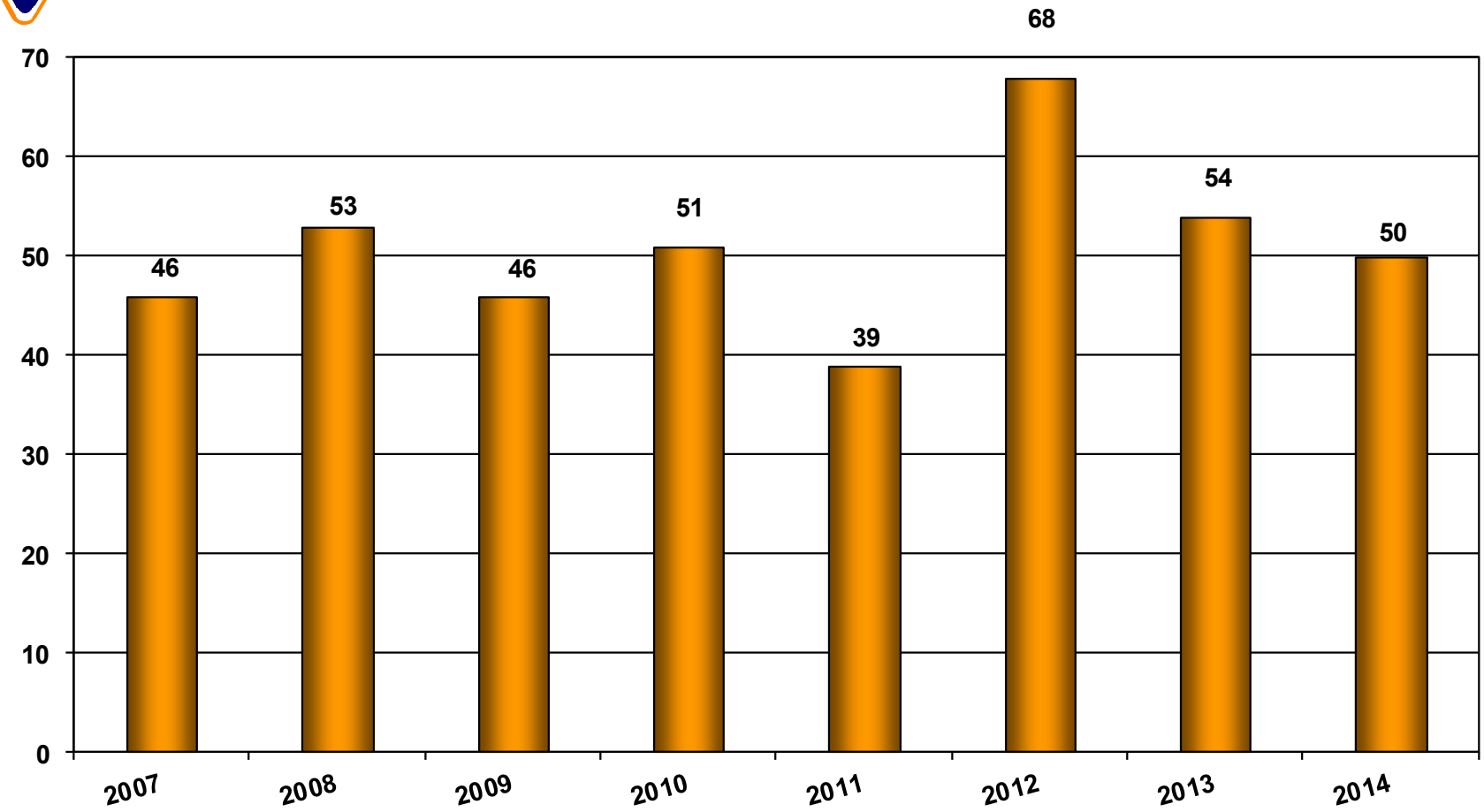
- Must ensure contractors work safely and comply with OHS Legislation!

- HOW ?
  - Check safety records before hiring/awarding work
  - Check written OHS documents e.g. programs/safe work procedures
  - Monitor/inspect the work being done
  - Ensure adequate supervision
  - Ensure reporting of incidents
  - Ensure safety meetings occur
  - Ensure required certifications are in place
  - Ensure tools/equipment are properly maintained
  - Keep records

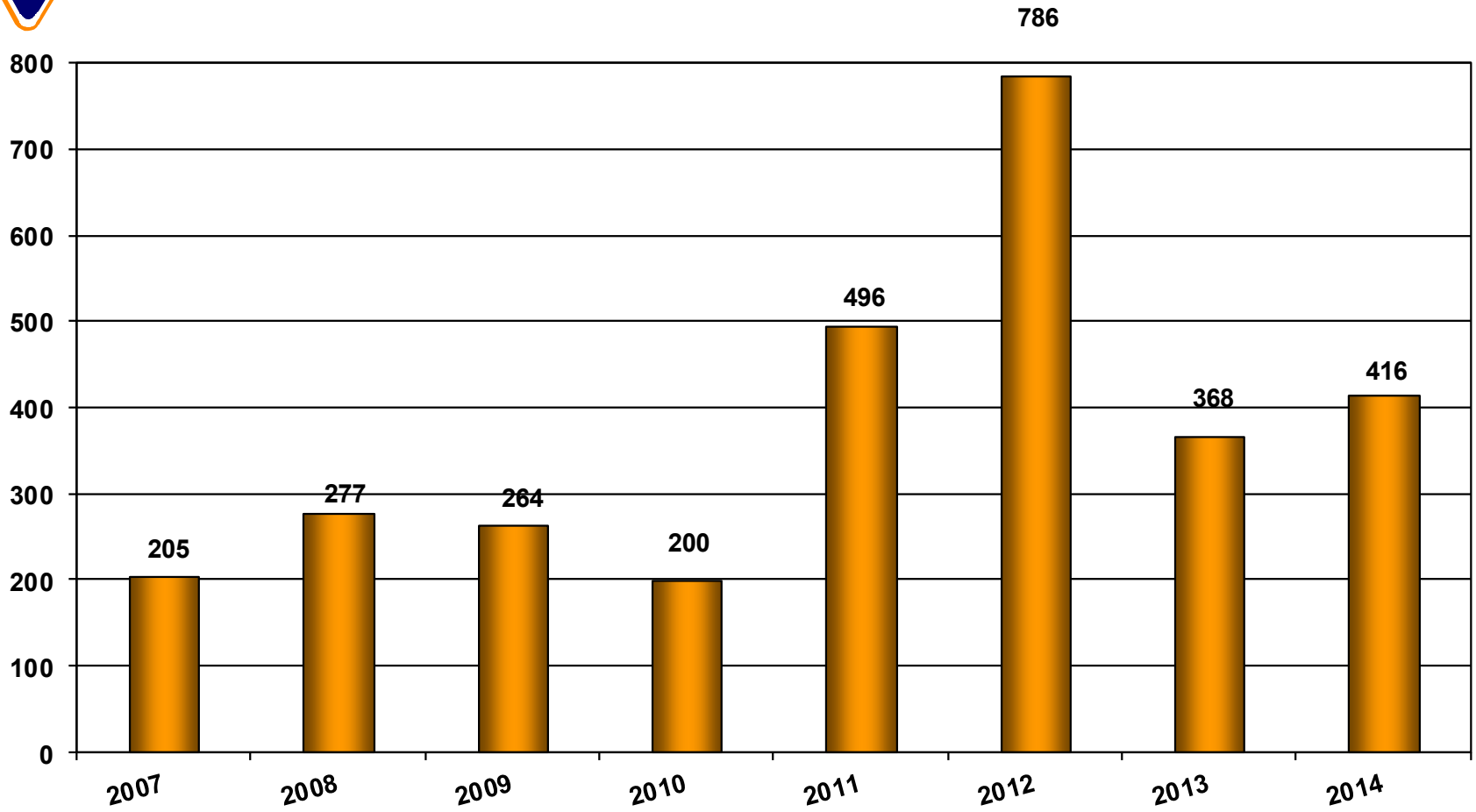
Total Number of Inspections – Municipalities



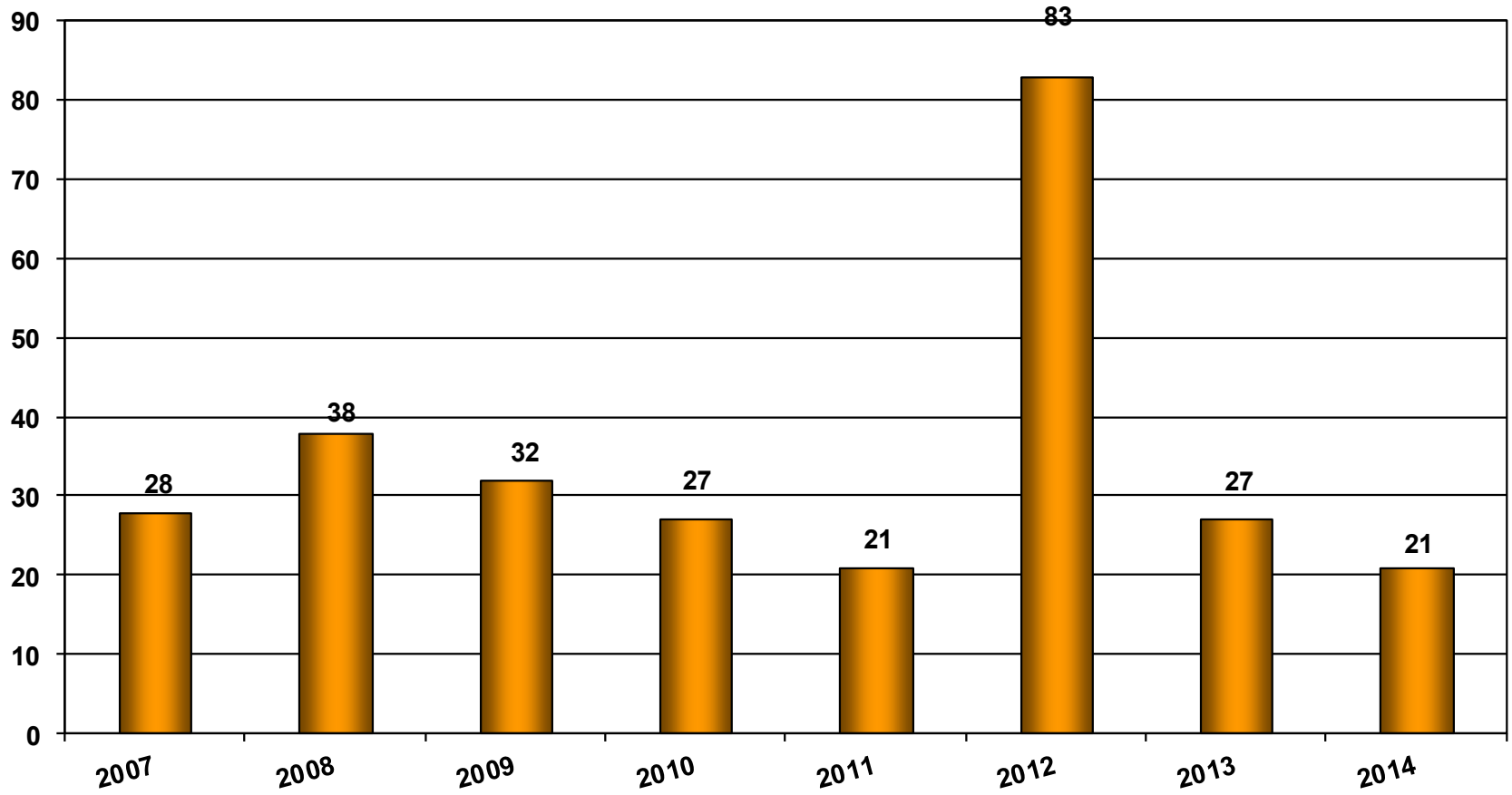
Number of Different Municipalities Inspected



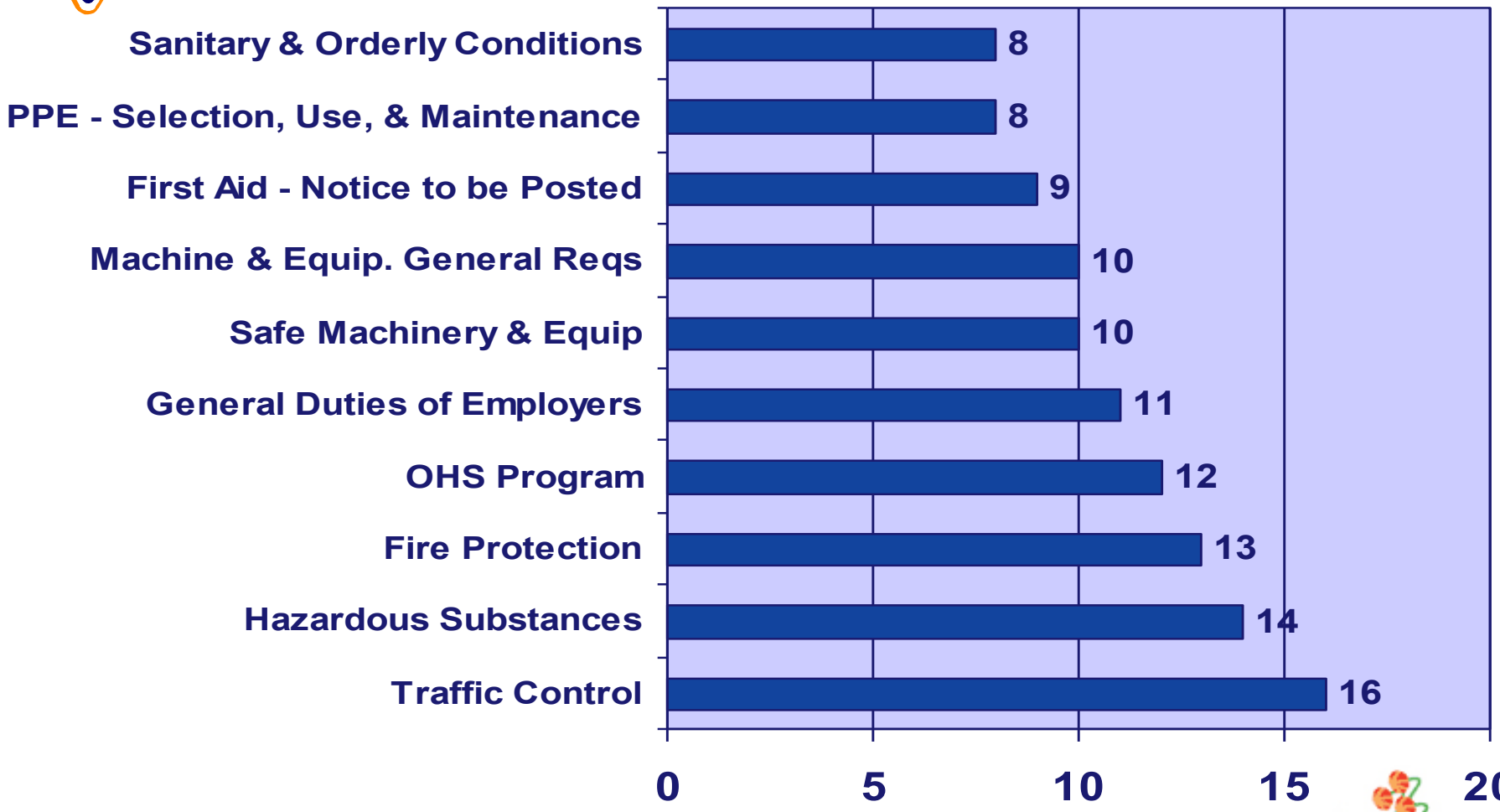
Total Number of Directives - Municipalities



Stop Work Orders Issued - Municipalities

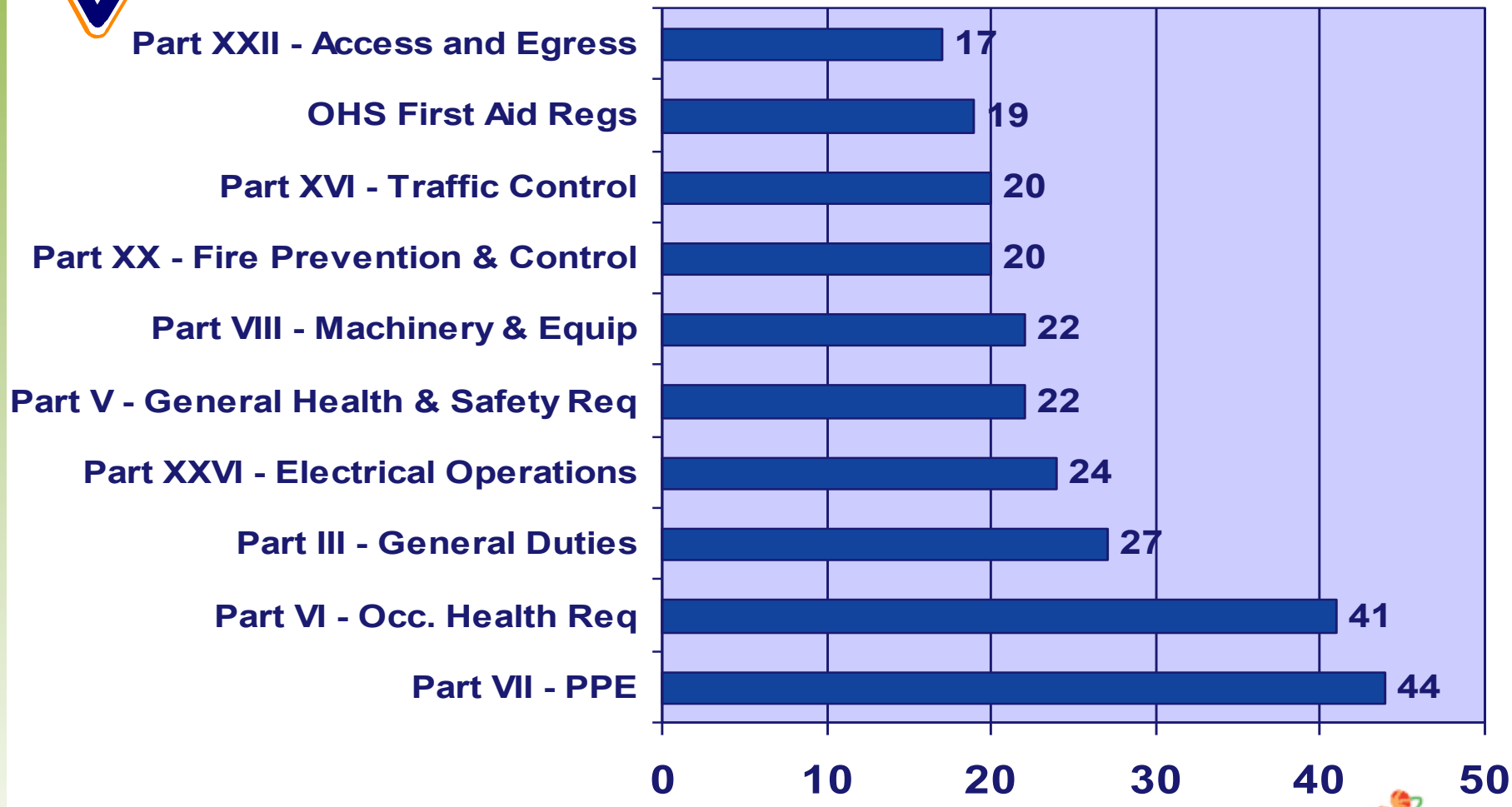


Top Ten Orders Written to Municipalities (2014)



Total of 111 out of 416 (26.7%)

OHS Regulations: Orders grouped by regulation section (2014)



Total of 256 out of 416 (62%)

Key Municipal Issues - not top 10

- Fall protection – training; PPE usage
- Scaffolding – proper setup
- Confined space entry:
  - New rules, mandatory training (Jan 1st, 2013)

Other Municipal Issues - not top 10

- Trench work:
  - Trench boxes, bench, slope and/or shore
  - Access to/from the trench
  - Excavated material piled too close
- Chemicals
  - PPE
  - Emergency wash resources
  - WHMIS
    - Labels
    - MSDS's
    - Education

Town of St. Anthony

- Fatality September 2000
- Demolition job - Fall from approx 6m.
- Owner/Contractor plea: 2 charges
  - $7000 + creative ($25,000 fall protection course)
- Town plea: as employer
  - $2000
  - Creative sentence:
    - Presentation to NLFM
    - Billboard
    - Northern Pen (Public Service Announcements)
    - Fund 2 day safety awareness seminar

Town of Deer Lake



- Worker buried, but survived (int. injuries) - May 2003

- No sloping or trench box
- Charged Feb. 2005
- August 2005: Fine $4000
- $3000 billboard; $2000 f.p. seminar
- Presentation to peer group

Town of Massey Drive



- Trench cave-in: Aug 2008
- Worker injured
- Same worker & super as in previous incident

Town of Massey Drive



WEDNESDAY
18 AUGUST 2010 THE TELEGRAM
WWW.THETELEGRAM.COM

LAW ENFORCEMENT

Massey Drive fined $5,500 for health, safety infractions

By Cliff Wells
Transcontinental Media — Corner Brook

The Town of Massey Drive must pay fines totalling $5,500 for an incident that saw a worker [illegible] in the shoulder when a [illegible] collapsed in 2008.

The accident happened two [illegible] today on Lady Diana [illegible]. A trench was dug in the [illegible] a worker was busy with a [illegible] when the wall caved in. The [illegible] was buried to just below his [illegible].

The Workplace Health Safety and [illegible] Commission wage [illegible] benefits reached a [illegible] $19,195.37. The health care [illegible] rehabilitation bill reached [illegible] for injuries to his head [illegible].

[illegible] the Crown attorney had signed for a fine of $3,000 [illegible] of the two counts the town had pleaded guilty to.

An underlying cause was workers didn't follow trenching guidelines that were given to them during [illegible] incident June 6," St. Croix [illegible].

A [illegible] order was issued to [illegible] similar issues at a trench [illegible] Lady Diana Cres."

Massey Drive had been charged [illegible] breaches of the Occupational Health and Safety regulations [illegible] 2008 matter, but two [illegible] were withdrawn.

The town pleaded guilty to piling material within 1.5 metres of a trench. The town also pleaded guilty to providing inadequate supervision or training to its employees.

Judge Wayne Gorman imposed a fine of $2,600 in connection with the piling of the material. He also imposed a fine of $3,000 for the training and supervision problem, saying it was a more serious offence.

"When a trench is dug, the town has a responsibility to make sure someone is on site to ensure the regulations are followed," Gorman said.

If regulations aren't followed when workers are instructed, he said a foreman or another official needs to be sent to make sure the rules are taken seriously.

The victim fine surcharge of 15 per cent was also levied, bringing the total to $6,325. The town has 90 days to pay the penalties.

Don Gallant, lawyer for the town, said the town entered an early guilty plea after discussing the matter with the Crown from the beginning.

"My client understands the seriousness of it," Gallant said. "They pleaded to it and took the fine, and will move forward from there.

"They're taking it seriously. It's my understanding they reprimanded some employees for the improper conduct. ... They don't want anyone to get hurt — bottom line."

The Western Star

- Charged 03/08/10
- Guilty plea to 2 charges (Aug 2010):
  - Trench work – fined $2500
  - Supervision – fined $3000
  - VFS @ 15%

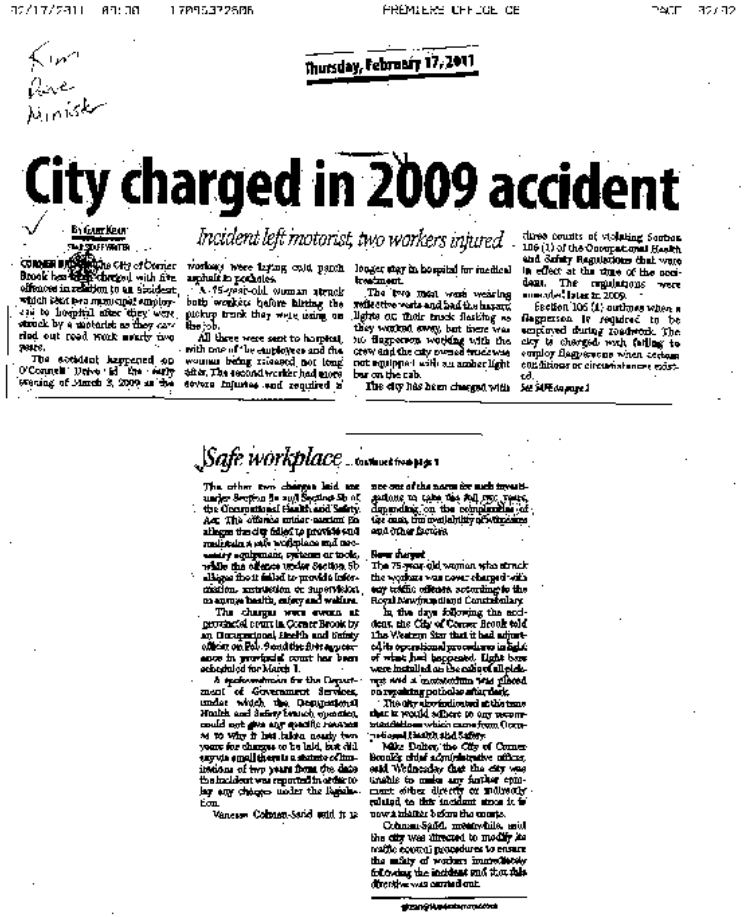
City of Corner Brook





- Traffic control
- Two workers injured
  - Cold Patching job
  - March 2009
  - Near dark
  - No flagging or signage

City of Corner Brook



Thursday, February 17, 2011

City charged in 2009 accident

Incident left motorist, two workers injured

By Gary Kean
Staff Reporter

CORNER BROOK — The City of Corner Brook has been charged with five offences in relation to an accident which sent two municipal employees to hospital after they were struck by a motorist as they carried out road work nearly two years.

The accident happened on O'Connell Drive [illegible] the early evening of March 3, 2009 as the workers were laying cold patch asphalt in potholes.

A 75-year-old woman struck both workers before hitting the pickup truck they were using on the job.

All three were sent to hospital, with one of the employees and the woman being released not long after. The second worker had more severe injuries and required a longer stay in hospital for medical treatment.

The two men were wearing reflective vests and had the hazard lights on their truck flashing as they worked away, but there was no flagperson working with the crew and the city owned truck was not equipped with an amber light bar on the cab.

The city has been charged with three counts of violating Section 106 (1) of the Occupational Health and Safety Regulations that were in effect at the time of the accident. The regulations were amended later in 2009.

Section 106 (1) outlines when a flagperson is required to be employed during roadwork. The city is charged with failing to employ flagpersons when certain conditions or circumstances existed.

See SAFE on page 2

Safe workplace

... Continued from page 1

The other two charges laid are under Section 5a and Section 5b of the Occupational Health and Safety Act. The offence under section 5a alleges the city failed to provide and maintain a safe workplace and necessary equipment, systems or tools, while the offence under Section 5b alleges that it failed to provide information, instruction or supervision to ensure health, safety and welfare.

The charges were sworn at provincial court in Corner Brook by an Occupational Health and Safety officer on Feb. 9 and the first appearance in provincial court has been scheduled for March 1.

A spokesperson for the Department of Government Services, under which the Occupational Health and Safety branch operates, could not give any specific reasons as to why it has taken nearly two years for charges to be laid, but did say via email there is a statute of limitations of two years from the date the incident was reported in order to lay any charges under the legislation.

Vanessa Colman-Sadd said it is one one of the norm for such investigations to take the full two years, depending on the complexities of the case, the availability of witnesses and other factors.

Never charged

The 75-year-old woman who struck the workers was never charged with any traffic offence according to the Royal Newfoundland Constabulary.

In the days following the accident, the City of Corner Brook told The Western Star that it had adjusted its operational procedures in light of what had happened. Light bars were installed on the cabs of all pickups and a moratorium was placed on repairing potholes after dark.

The city also indicated at the time that it would adhere to any recommendations which came from Occupational Health and Safety.

Mike Dalton, the City of Corner Brook's chief administrative officer, said Wednesday that the city was unable to make any further comment either directly or indirectly related to this incident since it is now a matter before the courts.

Colman-Sadd, meanwhile, said the city was directed to modify its traffic control procedures to ensure the safety of workers immediately following the incident and that this directive was carried out.

- Guilty pleas to 2 charges (Dec 2011):
  - Traffic control – fined $3500
  - Safe workplace – fined $3500
  - Creative - $2500 to Minister for public education

City of Mt Pearl / Contractor



Traffic control / PC

- Flagger injured Sept 2009
- Contractor and Consultant hired by City
- Contractor pled guilty:
  - $11,000 fine
  - Train employees: TC; PLH; trenching
  - $2800 to Minister

City of Mt Pearl



- City charged as PC
- Trial date set
- BUT: Due diligence demonstrated prior to trial
  - Particularly inspections
- Crown agreed
- Charge withdrawn

City of St. John's – ORR



Outer Ring Road - employers

- Fatality + 2 injured

- 9 workers involved
  - Dept of T & W: 3 workers
  - City of St. John's: 2
  - Irving Oil: 3 (N.B. and U.S.)
  - MTE Services: 1 (U.S.)
- 3 vehicles

Issues – charges (June 2013)

- Inspection work:
  - not in traffic control manual (TCM)
  - traffic control – one vehicle c/w light
- Vests – mostly not wearing
- Instruction and supervision - 5(b)
- Irving pled guilty - $15,500 total fine
- T&W and City found guilty of all charges
  - Sentencing: Feb 27, 2015

ORR - Penalty

- City of St. John's and Dept of T & W
  - Both fined $23,000 + vfs
  - Both: Creative $37,000 for traffic safety

Workers have been charged





- One case (roofing)
  - Fined $500
  - Super $750
  - Company OK
- Another case (roofing)
  - Employer fined $700
  - Super fined $600
  - Worker fined $500

Questions?

Thank you!