

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA), PRESS RELEASE, JUNE 11, 1999, "ALERT ISSUED TO EMERGENCY RESPONDERS NOT TO RELY SOLELY ON MATERIAL SAFETY DATA SHEETS"

An alert issued by the EPA warns local emergency responders not to rely solely on Material Safety Data Sheets (MSDS). The EPA's alert is designed to increase awareness so that responders can heighten the level of precautions, which may be necessary when dealing with an accidental release of a chemical. The alert also identifies additional sources of chemical information that could help prevent the loss of life. The EPA states concerns relative to "local responders" having the proper information in emergency response procedures, fire, and reactive hazards. The alert is available on the EPA Web Page at <http://www.epa.ceppo> under "What's New".

TLG Opinion:

Clients who have an Emergency Response Plan, or Procedure, should fully review the level of information available to their "in-house" Emergency Response Team (ERT), and/or "outside" emergency responder services, such as Fire, Rescue, Hazardous Materials/Cleanup. The following should be reviewed for inclusion and completeness in the plan:

- *A list of all chemicals, location, and volumes.*
- *Ensure there is a plan to obtain the emergency response information via two or three modes. (Examples: An electronic system should include a provision for back-up power. A laptop computer must be continually updated with current information and stored in a known and available location. All hard copies of the information should be stored in a secure file and location.)*
- *Ensure the response plan has accurate information, and is current relative to physical changes within or to a facility.*
- *Proactively continue to share the plan with all outside responders that may be involved in an emergency response.*
- *Conduct a review of the chemicals that pose the greatest potential hazards based on volumes, toxicity, and location. Ensure that there is a simple but complete source of information as to specific hazards.*
- *A Process Safety Plan, or Risk Management Plan, must be included for easy reference.*
- *Employee training should be documented and complete as required by the applicable regulations. Training records should be detailed and have competency information for each individual.*

ALWAYS MATCH THE NUMBER OF ANY REGULATORY AGENCY PERSONNEL WHEN BEING INSPECTED

TLG Opinion:

In discussions with our clients, regulators, and other businesses that have recently experienced on-site regulatory inspections, or audits, TLG has concluded that it is of major importance to have an equal amount of selected company representatives present during an on-site regulatory inspection or audit.

Having an equal number of selected company representatives, to the number of regulatory agency personnel, will provide a diminished possibility of any misunderstandings as to what is stated, reviewed, or agreed. The selected company representatives should have preassigned responsibilities. The most important being a lead spokesperson, a note-taker, and if the agency is taking photographs, a selected company representative should take similar photographs.

TLG has provided a number of clients with written guidelines / procedures as to how they should handle any regulatory inspection, audit, or inquiry.

If any of our clients desire assistance or information on this topic, please contact TLG.

ISO 14001 IS NOT A GUARANTEE OF COMPLIANCE

TLG Opinion:

Often, companies, facilities, or businesses believe that having an ISO certification indicates that they are compliant with the various specific governmental regulations. This is a common misperception. In several instances, TLG has had the opportunity to discuss this issue with a number of clients and regulatory agencies. These discussions have taken place in North America, Latin America, and Europe. The fact that a certification exists typically does not have any major impact on regulatory agencies if there are compliance issues.

Senior Managers, of ISO 14001 Certified companies, facilities, or businesses, should not be misled by the notion that they are compliant with applicable regulations. Compliance requires continuous specific diligence. Some TLG clients have an internal "ISO-like" program designed to mimic the ISO standards, but are not dependent on outside certification. These ISO types of programs do have a value; however, they must focus on regulatory compliance and not convenience.

There is no "guaranteed" method of compliance other than a program based on meeting regulatory requirements. All regulatory-based programs require continued, documented, and audits against the relative regulations.

If any of our clients desire assistance or information on this topic, please contact TLG.

CORPORATE ENVIRONMENTAL, EMPLOYEE HEALTH & SAFETY ANNUAL REPORTS AND THEIR "HIDDEN MESSAGES"

TLG Opinion:

In today's environment, it is common for businesses to create and publish a "self-reporting" Corporate EH&S annual report relative to their status of compliance, current challenges, and goals. For the most part, these annual reports serve a valuable purpose in the informing of companies' efforts to be better stewards of the environment, employee health, and safety in their respective communities. However, TLG has noticed some "common" traits in these documents that could lead to problems. Consequently, it is TLG's opinion that clients should consider the following when developing these annual reports:

- *Do not "fluff" the report to the degree that it contains nothing but good news.....nobody is perfect. Fluff is very transparent even to readers who are not fully aware of specific regulatory requirements. All claims should be fully documented and independently reviewed.*
- *Ensure the report is identified as an internal document, if there is a desire to keep the report within the company. A disclaimer statement should be included, if deemed appropriate.*
- *Have the report reviewed and approved by the highest level of senior managers, as well as legal counsel, before distribution. State the limits of distribution and confidentiality, if there is a need for same.*
- *Do not include current challenges, if there is a degree of admitting non-compliance to regulatory requirements.*
- *Before developing the report, decide who will be the specific recipients.*
- *If there are identified challenges, ensure that methods of addressing these challenges are in place, and well documented. Produce a documented plan.*

TLG has provided clients with resources in the authoring and substantiation services related to their respective annual reports. TLG Creative Design/Administrative Services has both designed and created all types of presentations and reports.

If any of our clients desire assistance or information on this topic, please contact TLG.

WORLDWIDE INDUSTRIAL WATER USAGE UNDER REGULATORY SCRUTINY

TLG Opinion:

Globally, the advent of industrial and population growth, and the availability and use of water is slowly emerging as a major regulatory concern. This issue has always been under some degree of regulatory scrutiny. However, due to a greater focus on global weather changes, industry water usage is quickly becoming a "government" problem. TLG has seen this growing awareness in virtually every region of the US, Latin America, and Europe. This issue has become prominently addressed in initial permitting applications, expansion projects, operating permits, and in a number of required regulatory submissions. Consequently, it is TLG's opinion that our clients should begin a series of water usage studies. The following components of water studies should include:

- *Quantification of water usage amounts, and purpose of use, such as sanitation, landscape irrigation, fire protection systems, HVAC (Heating Ventilation Air Conditioning), production/processes, and actual use within a product.*
- *Documented water use minimization (conservation) projects that would include the reuse of process water, water recirculation, and landscape irrigation based on need rather than time.*
- *Documented studies that compare historical water usage against production levels, employee levels, and facility expansions. The key in this study would be to document less usage, as a result of water conservation techniques.*

Review the current applicable standards, including those proposed, to gage the intensity of regulatory interest.

If any of our clients desire assistance or information on this topic, including specific regions, areas, or countries, please contact TLG.

DISCUSSION OF TLG FOOTPRINT SYSTEM

Client response to the Footprint System has been very positive.

The following are some of the advantages found by clients who have incorporated the Footprint System into their Environmental, Health & Safety (EH&S) programs:

- The Footprint System is an interactive computer software documentation system specifically designed for each client.
- It allows a highly effective use of site/facility and corporate EH&S resources.
- Each site/facility operates their respective EH&S programs independently, and a corporate EH&S function can provide information to each site/facility as required, or requested.
- Reportable information is accumulated in a centralized database, and eliminates the disruption of micro-management, such as site/facility periodic reporting on activity.
- The Footprint System provides training presentations and resource documentation to each site/facility.
- The documentation, procedures, standards, guidelines, executive briefs, and training presentations can be easily modified by each site/facility. The documentation is available in site specific languages.
- The Footprint System eliminates the expense of travel, and provides a value-added tool for clients.

TLG Footprint System has saved our clients substantial costs in EH&S program administration.

If any of our clients desire information, or a presentation on this topic, please contact TLG.

STANDARD INDUSTRIAL CLASSIFICATION CODE (SIC) VERSUS NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS)

BACKGROUND

Historically, the business identification classification system, used primarily by regulatory agencies in the United States, was the SIC code system. There were similar systems used in all other countries, as well as the United Nations. As a result of the confusion in these variations of identification systems, a cooperative effort was undertaken between the US, Canada, and Mexico. This new uniform industry-wide classification system (NAICS) was designed for reporting of all economic and regulatory activities within the three countries.

TLG Opinion:

TLG is bringing this to our clients' attention because of some client experiences with the past codes. The use of the proper code(s) for a business is critical, as the effects of applicable regulations are expensive and administratively burdensome. Many regulations use, as a basis of applicability, the identifying code designating a business "type". The wrong business code, in some instances, can place a business on a regulating agency list as being required to make submissions, or implement a specific type of regulatory program. Please review the code (SIC / NAICS) that has been selected for your respective business. Information as to NAICS can be found at <http://www.naics.com>.

If any of our clients desire assistance or information on this topic, please contact TLG.

PRODUCTION / PROCESS / PILOT DEVELOPMENT FACILITIES AND THE RELATIONSHIP TO ENVIRONMENTAL REGULATIONS OR EXEMPTIONS

Many businesses, including some TLG clients, have an in-house research and development (R&D) group. Regulatory agencies, recognizing the variations and types of functions needed to have an R&D function, make some allowances in operational permits. These allowances, or exemptions, provide the R&D functions and facilities greater operational boundaries than are applied toward "normal" manufacturing functions. In some instances, the R&D functions include a "pilot", or interim facility, to test "produce" the newly developed product. These pilot facilities, in most instances, fall under the previously discussed R&D exemptions. However, if the pilot plant is producing a product, which is then distributed in the marketplace, then there may be significant permitting and regulatory implications. If this is the case, the business may face significant penalties if the function is not administered properly.

TLG Opinion:

TLG's opinion is that if clients have a pilot facility, as described above, they should review the operations, purpose, and the facility's relationship to serving the marketplace. After a preliminary review of the pilot facility's function, a specific definition should be obtained through a review of the applicable regulations, at all levels, including federal, state, and local. As every regulatory agency may have different criteria, caution should be taken as to what regulations apply.

If any of our clients desire assistance or information on this topic, please contact TLG.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) LETTERS OF INTERPRETATION

EMPLOYEE INJURY AND USE OF DRUG SCREENING AFTER AN ACCIDENT AND THE EFFECT ON RECORDABLE INJURY RECORDS (OSHA LOG)

An employer requested an interpretation from OSHA regarding recordkeeping requirements based on a positive, post accident drug screening. Apparently, an employee had a workplace accident while under the affect of an illegal drug. The employer's policy required drug screening on their employees if they had an accident and/or injury. The post accident drug screening proved positive as to drug use. The employer then requested from OSHA an interpretation as to their recording responsibility for the injury on their OSHA log. The response from OSHA goes beyond this certain incident.

OSHA responded by stating that no matter what the cause of an injury, the event must be recorded on an employer's injury OSHA log. Fault plays no part on the requirement for recording the injury or illness for statistical purposes, as well as regulatory submissions.

POST EXPOSURE HEPATITIS B VACCINE BOOSTER CONSIDERED A MEDICAL TREATMENT (OSHA RECORDABLE INJURY)

OSHA responded to an employer's inquiry as to how an employee's medical treatment (Hepatitis B vaccine booster) should be recorded. The response stated that if the vaccine was provided as the result of a potential incident to Bloodborne Pathogens exposure, then it should be recorded as an injury with medical treatment. If the booster is given based on an employee's request, after applicable training, then it is not required to be recorded.

RESOURCE INFORMATION AVAILABLE TO TLG CLIENTS

As a service to *TLG* clients, and readers of our bulletin, *TLG* Research is pleased to offer specific regulatory information, or other applicable regulatory information. This information is available on a regional, country, state, or local level, and includes "cross-boundary" organizations. Please contact *TLG* with any inquiry.

TLG PROFESSIONAL REFERENCES

Globally, *TLG* has an excellent relationship with professional organizations. If *TLG* clients have a need for services on a regional or specific country basis, such as Legal Counsel, please contact *TLG* with any inquiry.

FEATURED IN THE NEXT TLG CLIENT BULLETIN

- Regulatory impacts -- Proposed or promulgated U.S. EPA new water regulations.
- Increasing interest in Cuba -- *TLG* article that will discuss the current regulatory environment.
- OSHA new proposed regulations, or revisions of current regulations, underway -- *TLG* overview and opinions.

DISCLAIMER:

The intent of THE LION GROUP *Regulatory Consultants* CLIENT BULLETIN is to provide the reader with information regarding regulatory activities. The subjects discussed are presented in a very general sense, and are combined with interpretations and opinions from THE LION GROUP *Regulatory Consultants*. The reader is encouraged to contact THE LION GROUP *Regulatory Consultants* for further information as it relates to their specific situation. THE LION GROUP *Regulatory Consultants* makes no warranty, express or implied, nor does THE LION GROUP *Regulatory Consultants* assume any legal liability as to accuracy, completeness, or usefulness of any of the information in THE LION GROUP *Regulatory Consultants* CLIENT BULLETIN.