



Client Bulletin

"WHISTLEBLOWER" LEGISLATION

The enactment of what is commonly known as "Whistleblower Initiatives" continues in the USA on a state level. Recently in the State of Texas, an attempt was made to introduce a bill that provides a "bounty" to any person who reports a confirmed environmental violation. The bill (H.B. No. 532) does not appear to have gained support to the point of promulgation in the current legislative session. In various states, there are similar pieces of legislation that already provide this type of "compensation".

TLG OPINION: *Clients should be aware of the potentials involved when these types of initiatives are enacted. These types of legislation are written and approved for "the public good" and are intended to allow all citizens a process to articulate their concerns. However, these types of legislation can produce a number of unfounded and frivolous complaints. Clients should be sensitive to new legislation that contains similar characteristics, and actively voice concerns through their selected resources such as elected officials, associations, or lobby groups.*

OSHA 12,500 EMPLOYER LISTING READILY AVAILABLE TO THE PUBLIC

On April 26, 1999, Occupational Safety and Health Administration (OSHA) published a national news release. The news release discussed that OSHA had identified, and made available to the public, a listing of the 12,500 workplaces "with the highest occupational and illness rates". Secretary of Labor, Alexis M. Herman, said, "These employers must do better, they (the employers) must do everything possible to reduce the hazards in their workplaces and we're willing to help them. Workers should not have to risk injury or illness or their lives for their livelihood."

A letter from Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health Administration, has been mailed to the selected 12,500 employers. TLG has obtained a copy of this letter. The letter includes the following: A statement indicating OSHA's concern, an offer to assist the recipient through a consultation program, and ends with the following statement, "I encourage you to consider these suggestions to ensure safe and healthful working conditions in your establishment. Please remember, however, that an OSHA inspection may still occur whether or not you use a consultant to assist with your program."

Additionally, there is a "1997 Establishment Profile" developed by OSHA with information from the employer's submitted OSHA form 196. The profile contains the employer's address, standard industrial code (SIC), and the person and title who signed the OSHA form 196, telephone number, information transcribed from the employer's submission, three comparative tables against the Bureau of Labor Statistics industry rates. Also, there is a listing of the "Standard Violations for Industry" for the specific classification of the employer, and the related number of inspections conducted within the industry group. Finally, there is a document titled, "Millennium Bug Can Affect Workplace Safety and Health".

TLG OPINION: *In the letter from Charles N. Jeffress, there is no reference that a company needs to respond. Clients who are recipients of this letter, and the attached establishment profile, should review the validity of the data, and other information, for accuracy. There is always a slight possibility that the information may have been transposed in error. The receipt of this letter should be communicated and reviewed with the highest level of company management. Clients should consider that this information is available to the public through the OSHA web site.*



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HAZARDOUS WASTE CHARACTERIZATIONS BEING AUDITED

Some TLG clients have recently received a written audit letter and package from The Texas Natural Resource Conservation Commission (TNRCC) that requests information. The audit package is directed at companies that generate and dispose of certain classifications of wastes. A written response is required within 10 days after receipt of the package. The package contains a document titled, "Waste Classification Document Requirements", dated April 1, 1999. The waste classification document is divided into four (4) different sections:

- Part I, Introduction
- Part II, Hazardous Waste Determination
- Part III, Classification Checklist, and
- Part IV, Summary.

TLG OPINION: *A client who has received this TNRCC audit letter and package are required to specifically provide "hard" documentation as to how the characteristics of their wastes were established. There are very specific requirements listed, and the client should ensure that their responses are accurate. There is no specific reference in the documentation as to what TNRCC will do after reviewing the client's responses.*

CONFINED SPACE RESCUE RESPONSE

(Federal Register / Vol. 63, No. 230 / Tuesday, December 1, 1998 / Rules and Regulations)

Within the last few months, TLG has received and reviewed a number of inquiries about changes regarding the amount of time a company should allow for confined space rescue response. In synopsis, the changes regarding this issue were that OSHA envisioned that employers were to be required specific emergency response time requirements. Terms used in the various proposed changes were "immediate" or "timely". These "timely" requirements were extended to both internal company rescue teams or outside emergency response contractors. This change, or clarification, has created a number of questions from companies who have confined spaces under their control.

TLG OPINION: *TLG has discussed the matter with OSHA and renders the following for our clients' consideration:*

1. *Review your present Confined Space Program and enhance as required by the new regulatory language.*
2. *If your company is using an "outside" rescue service, or contractor, assure they are thoroughly familiar with your program. Document their qualifications, response times, and familiarity with all of your confined spaces, thoroughly.*
3. *After you have determined the above (item #2), review the response times with the hazards identified in your confined spaces.*
4. *Conduct practice "incidences" and document all pertinent information.*
5. *OSHA will expect a company to be compliant with the confined space standard, no matter who is responsible for the "immediate" or "timely" emergency response.*
6. *Contact your local OSHA office for further information as to this issue.*



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UPDATE ON INDOOR AIR REGULATORY ACTION

Many TLG clients have had the unfortunate situations stemming from employee complaints relating to "Indoor Air Pollution". Interior remodeling, outside repairs to buildings such as painting or roof repair, installation of new carpeting, office machinery, or similar changes have given cause for these complaints. These conditions increase during the times of the year when buildings are closed due to outside environmental factors such as cold or heat. Employee complaints are often subjective in nature, and are directly related to the occupancy time. Symptoms vary in type and intensity. Based on published studies, over half of the sources of indoor air quality are related to poor ventilation. Other contamination causes, which have been identified, include microbial growths in HVAC, and some types of internal fabrics. A proactive "Indoor Air Program" may prove beneficial in identifying potential problems. A proactive program includes industrial hygiene studies conducted on a "routine" basis.

TLG OPINION: *If clients are in the midst of remodeling their facilities, moving into a new facility, or want to initiate a program, client should conduct a baseline indoor air study. It is the opinion of TLG that there will be intensified regulatory activity in indoor air. There are currently studies funded by OSHA and the EPA regarding these workplace hazards.*

EDITORIAL

by Thomas O. Jones, Principal, THE LION GROUP *Regulatory Consultants*

Politics and the Regulatory Freight Train

Daily, we, at TLG, find ourselves helping clients globally with regulatory issues in the disciplines of environmental and employee health and safety. Because of our daily efforts, we find that the "intensity" of regulatory efforts by governmental agencies seem to become more visible in direct relation to political activity. Those of us who work in the areas of regulations know that regulations never seem to diminish in number but rather grow in number and complexity. It becomes more complex as we see a "melding" of regulations between different agencies. Then after the federal agencies adopt new regulations, there are the state, county, and city variances of the federal regulations. To make matters more complicated, we deal with these regulations on an international level and must constantly compare these requirements. In addition to the governmental regulations, many clients are concerned with the various internationally recognized certification requirements such as those issued by ISO.

On top of the complexities discussed above, you can add in the "influence" of politics. Presently In the USA, we have the beginnings of another political election including the presidential race. The candidates for the elected offices at the very least want to be seen as champions of efforts in "bettering" their potential voter's environment and workplace. Those currently in office will want to point out their current efforts in these areas, and those aspiring to office will want to "raise the bar" in these areas. At the same time, the candidates will want to be seen in a positive light by groups or associations that have a large number of members. The various agencies are in the midst of vying for governmental funding, and in this process, they will be detailing their efforts and pointing out their needs for added resources. We invite you to visit their specific web sites to see their various new initiatives and activities.



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EDITORIAL--continued

In this CLIENT BULLETIN, you will see that OSHA recently published a list of 12,500 employers who have a reported employee accident rate higher than the industrial average. Consider who has access to the list. The list is available to a countless number of groups and associations such as labor unions, insurance companies, political parties, interested citizens, other government agencies, and the list goes on. On the environmental side, you have lists of agency activities that include the naming and details concerning violations by companies and individuals. In the CLIENT BULLETIN, you will note that the discussion of "Whistleblower" Legislation continues to draw attention as a way to satisfy and reward reported regulatory violations.

TLG recently was invited to individually meet with a number of ambassadors and commercial attachés who are stationed in Argentina, Brazil, Chile, Paraguay, and Uruguay. The purpose of this meeting was to enhance our ability to address our client's commercial efforts in these countries and related markets. TLG has been given some new documents, which extensively discusses the MERCOSUR initiative in the Latin American sector. Additionally, TLG has gained further information by which our clients can be provided an enhanced method for extensive information as to specific countries or markets. As our clients continue to investigate these markets for the manufacture, distribution, and sales of their respective products, TLG continues to expand its base of relevant information and governmental contacts. The MERCOSUR, Southern Common Market, is an excellent example of the ever expanding and melding of regulations related to environmental, health, and safety. To say the least, it is complex and ever changing. If our clients have any interest in this area of the expanding global market place, TLG would be very pleased to be of assistance.

We at TLG see the regulatory activity building to a pace that can "outstrip" our clients' internal staffs. Those who believe that regulatory activity will diminish, will be disappointed. Those who believe that their compliance shortcomings will not be made more visible, will be disappointed. Those clients who believe that moving manufacturing to another country to evade regulatory constraints, will be disappointed.

The only way that a company can limit the public and legal liabilities in the areas of environmental, employee health and safety, must be proactive. The days of addressing challenges in a reactive way are counted. The business practices of putting compliance issues and their costs "on the back burner" are over.

The Lion Group is the recognized global leader in Regulatory Consulting. Environmental, Health & Safety...

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