Chapter 5

CORPORATE CRIMINAL LIABILITY ACT

Policy: It is the policy of the Division of Occupational Safety and Health (DOSH), also known as Cal/OSHA or the Division, to implement the California Corporate Criminal Liability Act (Penal Code §387) by receiving notifications of serious concealed dangers, by maintaining appropriate records concerning any such notifications, by making a referral if the serious concealed danger falls within the jurisdiction of another governmental agency and by investigating any serious concealed danger which falls within the jurisdiction of the Division, as appropriate.

Authority: DOSH will administer this policy in compliance with all applicable laws, rules, and guidance:

- California Penal Code, Section 387

Procedures:

A. Required Division Notification

1. Fifteen (15) Day Notification

   The Corporate Criminal Liability Act requires that any corporation or person who is a manager inform the Division of Occupational Safety and Health in writing of any serious concealed danger within 15 days after acquiring actual knowledge of the danger.

   a. Serious Concealed Danger

      Serious concealed danger, used with respect to a product or business practice, means that the normal or reasonable foreseeable use of, or the exposure of an individual to, the productor business practice creates a

substantial probability of death, great bodily harm, or serious exposure to an individual and the danger is not readily apparent to an individual who is likely to be exposed.

1. Product means an article of trade or commerce or other item of merchandise which is a tangible or an intangible good, and includes services.

2. Great bodily harm means a significant or substantial physical injury.

3. Serious exposure means any exposure to a hazardous substance when the exposure occurs as a result of an incident or exposure over time and to a degree or in an amount sufficient to create a substantial probability that death or great bodily harm in the future would result from the exposure.

b. Manager

Manager means a person having both (1) management authority in or as a business entity and (2) significant responsibility for any aspect of a business which includes actual authority for the safety of a product or business practice or for the conduct of research or testing in connection with a product or business practice.

c. Actual Knowledge

Actual knowledge means has information that would convince a reasonable person in the circumstances in which the manager is situated that the serious concealed danger exists.

2. Immediate Notification

If there is an imminent risk of great bodily harm or death, the corporation or manager is required to immediately notify the Division and the Division shall take steps to address the imminent hazard. See Section C.1.c.

B. Required Employee Warning

The Corporate Criminal Liability Act requires that any corporation or person who is a manager is required to warn its affected employees in writing of a serious concealed danger within fifteen (15) days of acquiring actual knowledge of the danger.

NOTE: The phrase "warn its affected employees" means give sufficient description of the serious concealed danger to all individuals working for or in the

business entity who are likely to be subject to the serious concealed danger in the course of that work to make those individuals aware of that danger.

C. Division Response to Report of Serious Concealed Danger

1. District Office
   a. Written Notification

      If a written notification of a serious concealed danger is received by the District Office, the District Manager shall fax the document immediately to the Legal Unit Office at Division Headquarters with a copy to the Regional Manager and advise the Legal Unit by telephone that the document has been faxed.

   b. Telephonic Notification
      1. If a report of a serious concealed danger is made by telephone or in person, the District Manager or compliance personnel shall record information about the serious concealed danger on a Serious Concealed Danger Intake Form (see Attachment A) and inform the person making the notification that a written report is required.
      2. After completion of the Serious Concealed Danger Intake Form, District Office personnel shall fax the Intake Form to the Division's Legal Unit at Division Headquarters and advise the Legal Unit by telephone that the document has been faxed.
   c. Initial Investigation
      1. Imminent Hazard

         If the District Office believes that the information contained in the notification constitutes an imminent hazard and the workplace which contains the hazard is under the jurisdiction of the Division, the District shall immediately inspect the workplace containing the imminent hazard.

         NOTE: An imminent hazard is any condition or practice which poses a hazard to employees which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such hazard can be eliminated through normal enforcement procedures.

      2. Other Hazards

         For non-imminent hazards under the jurisdiction of the Division, the District Office shall not initiate an inspection or investigation of the serious concealed danger until after notifying the Legal Unit. See Section C.2.b.(1)(a) and (b).

2. Legal Unit
   a. Recordkeeping

      The Legal Unit shall maintain a permanent record of each notification of a serious concealed danger made to the Division.

   b. Referral
      1. Division of Occupational Safety and Health Jurisdiction
         a. After receiving a Serious Concealed Danger Intake Form from a District Office, the Legal Unit shall determine if the serious concealed danger falls within the jurisdiction of the Division. If so, the Legal Unit shall refer the matter to the Deputy Chief for Field Operations for appropriate action.
         b. The Deputy Chief shall transmit the information to the appropriate District Office through the Regional Manager on a Serious Concealed Danger Referral Form for appropriate investigatory action. See Attachment B.
      2. Other Jurisdiction

         If the serious concealed danger falls within the jurisdiction of another governmental agency, the Division's Legal Unit shall report the serious concealed danger telephonically within 24 hours to the appropriate governmental agency followed by transmittal of a formal written referral letter together with a copy of the notification received and a copy of the Serious Concealed Danger Intake Form.

         NOTE: Appropriate governmental agency means agencies which have regulatory authority with respect to the product or business practice and serious concealed dangers of the sort discovered and include: (a)Division of Occupational Safety and Health; (b)California Department of Health Services; (c)Department of Agriculture; (d) County departments of health; (e) U.S. Food and Drug Administration; (f)U.S. Environmental Protection Agency; (g) National Highway Traffic Safety Administration; (h) Federal OSHA; (i) Nuclear Regulatory Commission; (j) the Consumer Product Safety Commission; (k) the Federal Aviation Administration; and (l) the Federal Mine Safety and Health Review Commission.

   c. Investigation
      1. If, during the performance of an inspection of a workplace reported as one containing a serious concealed danger, compliance personnel determine that there has been a failure to notify the Division of the presence of a serious concealed danger in a timely fashion or to appropriately warn employees as required, compliance personnel shall refer the matter to the Bureau of Investigations. See Chapter 4.

2. After the inspection has been completed, the District Manager shall send a copy of the complete inspection file to the Legal Unit.