



ATTORNEYS AT LAW

## **THE NEED FOR A CORPORATE REGULATORY COMPLIANCE POLICY**

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During the past year there have been several reports of construction companies being charged with violation of the Federal Tax laws, the Occupational Safety and Health Act, various Environmental laws, Antitrust laws, Labor laws , etc. Unfortunately, this is nothing unusual. In fact until recently, many companies took the position that if you wanted to be competitive, you had to skirt the edges of certain laws and expect that every so often you would get caught. The corporate mind set was that of the typical automobile driver . . . . yes I understand that there is a speed limit but I will drive 10 miles over the speed limit and if I get caught, I will pay the fine.

However, many of the Federal regulatory enforcement agencies are no longer satisfied with giving those who violate the law a slap on the wrist and asking them to pay what is often an insignificant fine. Regulators from the EPA, OSHA, the Antitrust Division of the Department of Justice and other agencies are now looking to impose criminal sanctions on those responsible for certain types of intentional or willful conduct. No more slap on the wrist. These regulators are serious. They want to put those who violate the law in jail. No . . . . they are not aiming at the supervisor on the job site who missed the fact that an iron worker connecting ten floors above ground level had not tied off. They are looking for the president of the company, the corporate executive who had primary responsibility for regulatory compliance. The regulators are taking the position that failure to adopt comprehensive regulatory compliance programs puts top management personally at risk of a jail sentence if and when a problem occurs.

As an example, assume that I am the President of a mid size construction firm and I hire a person to serve as Director of Safety. I notice that we are getting reports of a continual pattern of injuries on our jobs. I walk around some job sites and I see that some people are not wearing hard hats and others are not always tying off. I talked to my Director of Safety and he tells me that this is the construction industry and you have to expect some job related injuries. He says that construction workers are often hard to control and some just don't listen to safety directions. I say okay and go out and play golf.

Several days later, a worker who was not wearing a hard hat and was not tied off falls and dies. I am charged with a criminal violation of OSHA. My Safety Director told the OSHA inspector that I knew that there were problems on my jobs but I didn't seem to care and didn't take steps to correct the problem. Is OSHA the only problem? Certainly not! We can create the same scenario for other agencies such as EPA and the Department of Justice.

Is corporate regulatory compliance only a legal issue? Not so, regulatory compliance is also an accounting issue and a basic business issue.

Many accounting firms look at corporate regulatory compliance as part of their audit evaluation. They will ask what steps the company is taking to insure that it is complying with the laws that govern its operations. If the accounting firm believes that the company is not fully addressing its responsibilities, your management letter may specify the need to step up your regulatory compliance procedures.

From a business standpoint, many owners will not deal with contractors unless the contractor can show an excellent regulatory compliance record. Owners recognize that if there is an injury on the job or an environmental incident, when suit is filed the owner will be listed as a party defendant. Owners do not want to take that risk.

Finally, regulatory compliance is part of your responsibility to your company as a corporate entity. You want to have a company where all employees work in a safe workplace,

where the environment is protected and where you can compete on an open and fair basis as part of the free enterprise system. And, you don't want to go to jail!

What is the answer? The answer is to adopt a comprehensive regulatory compliance program and make sure that regulatory compliance is part of your corporate culture. Emphasize regulatory compliance. Educate your workforce. Fund the regulatory compliance program and provide adequate staffing. Regulatory compliance makes good business sense. And if an incident occurs, when the regulators knock on the door, you want to have a strong regulatory compliance program to show as your first line of defense.