

Environmental Regulations

ENVIRONMENTAL REGULATIONS are a fact of modern-day life in the decorating products industry. Most of the federal-level, environmental legislation in the industry today has emanated from two primary sources: the Environmental Protection Agency and the Occupational Safety and Health Administration within the Department of Labor.

OSHA regulations are known throughout the decorating products industry to retailers and manufacturers alike. EPA rulings, on the other hand, have had minimal, direct effect on retailers, although they've had a significant impact on the manufacturers of decorating products—paint and other coatings, wallcoverings, window treatments and floor coverings.

Another distinction between OSHA and EPA regulations relates to changeability. OSHA's requirements are expected to remain stable for the foreseeable future, while additional changes to EPA regulations are forecasted by decorating products industry experts and government officials alike. One of the most significant changes anticipated is that EPA requirements which have, until now, affected primarily manufacturers, may soon embrace retailers as well.

The Hazard Communication Standard, also called Employees' Right-to-Know, is perhaps the most familiar of all OSHA environment-related rulings. (The article on page 36 contains a summary of retailers' primary responsibilities under this law).

But there are additional government requirements that decorating products retailers may face if the anticipated modifications to EPA regulations come to pass.

EPA's Emergency Planning and Community Right-to-Know (EPCRA)

Hattie Thomas, Community Relations Coordinator in EPA's Region 7, identified four pieces of EPA legislation that affect the decorating products industry:

- Resource Conservation and Recovery Act of 1976 (RCRA);
- Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), commonly known as "Superfund";

- Superfund Amendments and Reauthorization Act (SARA) of 1986, which expanded and extended CERCLA; and
- Emergency Planning and Community Right-to-Know Act (EPCRA), which is the same as Title III within SARA.

Three of these four acts of Congress—CERCLA, SARA and EPCRA—are very closely related, like pieces of an evolving puzzle. EPCRA is a part of SARA, and SARA builds on CERCLA. In a sense, we have two "families" of laws: RCRA on one hand and CERCLA/SARA/EPCRA on the other hand.

Dale Armstrong, public affairs specialist for the EPA, drew this distinction between RCRA and SARA: "RCRA's purpose is to prevent the unsafe disposal of hazardous waste. SARA is more concerned with correction, in cases where dangerous chemicals were disposed of improperly."

It is Title III of SARA, known as EPCRA, that's causing the recent stir. Both government officials and decorating products industry experts believe it will be amended—again—and they suspect that retailers might get caught up in the next wave of revisions.

An understanding of EPCRA's purpose and provisions may help retailers prepare for any additional requirements. Based on interviews with EPA representatives and a review of current EPCRA publications, it appears that most of the owner/manager responsibilities imposed by EPCRA fall under two headings: inventory management and government reporting.

EPCRA Overview

EPA's Thomas explained the common sense logic behind EPCRA: "Local fire departments and other emergency response organizations should know as much as possible about the nature of the emergencies they're attempting to control. If there's a fire or other chemical release, fire fighters need to know what kinds and quantities of chemicals are on site."

Actually, "Emergency Planning and Community Right-to-Know" (EPCRA) is a fairly descriptive title. Take the phrase "Emergency Planning." EPCRA requires that state and local governments

**Essential EPA
and OSHA
information
that retailers
should know.**

By Janice K. Niehaus

develop comprehensive, written plans for handling any emergencies that might arise in connection with hazardous or toxic chemicals.

The phrase "Community Right-to-Know" stems from the necessity of state and local governments to know about the chemicals within their geographical jurisdictions in order to develop emergency response plans. Therefore, companies must notify the authorities of any hazardous chemicals on their premises. "Community Right-to-Know" also refers to the public's right to review the information gathered or generated under this law.

According to Doug Elders, Environmental Engineer in EPA Region 7 and a specialist on EPCRA, "There are several different reporting requirements under the different sections of EPCRA." Elders focused on the decorating products industry and discussed four specific sections:

- Section 301-303, Emergency Planning;
- Section 304, Emergency Release Information;
- Section 311-312, Community Right-to-Know; and
- Section 313, Toxic Chemical Release.

Section 301-303 Emergency Planning identifies more than 400 Extremely Hazardous Substances (EHS) and defines a Threshold Planning Quantity (TPQ) for each substance.

According to Elders, "Any company that has any of the listed chemicals in its facilities at quantities above the thresholds must report them to the local authorities in order to be included in the local emergency plans." (turn page)

Elders offered ammonia, with a TPQ of 500 pounds, as an example. Any company that has more than 500 pounds of ammonia on site must alert local and state emergency response authorities.

Other listed chemicals include acetone, ethanol, methyl ethyl ketone (MEK), naphthalene, toluene and

xylylene, to name just a few of the 400-plus substances.

Section 304 Emergency Release Notification

Section 304 Emergency Release Notification requires that companies notify local and state authorities if they accidentally release hazardous chemicals

into the environment. "The Section 304 list," said Elders, "is the largest list since it includes all of the most common chemicals."

Once again, quantities are defined—a Reportable Quantity (RQ) in this instance. Elders continued, "The reportable quantity for ammonia under Section 304 is 100 pounds." In other words, if less than 100 pounds of ammonia were released, no report would be necessary.

Section 311-312 Community Right-to-Know

Elders stated that "Section 311-312 applies mostly to manufacturers and processors, not retailers." But certain phrases in Section 311-312 are already familiar to decorating retailers. For example, the section refers to those "facilities that must prepare or have available material safety data sheets (MSDS) under OSHA's Hazard Communication Standard. . ."

The regulation also applies to: (1) Extremely Hazardous Substances (EHS) on site in quantities greater than 500 pounds or above the TPQ for the particular chemical, whichever is lower, and (2) all other hazardous chemicals on the premises in any amount.

In addition to keeping MSDSs on file and available on request (in accordance with OSHA's requirements), EPCRA's Section 311 requires that companies provide copies of the MSDSs to state and local emergency agencies and to the local fire department. In lieu of actual copies of the MSDSs, a company may provide a list of the MSDS chemicals showing common chemical names and hazard categories.

EPA's Elders described the information sought by Section 312 as "similar to MSDS information but more comprehensive." On a special "inventory form," Section 312 requests information about quantities of chemicals on hand—average daily quantities and maximum amounts on site at any time during the preceding year. Section 312 also questions the location of the MSDS chemicals within the facility and the manner of storage.

Section 313 Toxic Chemical Release

Section 313 Toxic Chemical Release introduces another form: the Toxic Chemical Release Inventory Form. Facilities which routinely release toxic chemicals into the environment must report these emissions. Manufacturers and processors must report annual emis-

OSHA's Hazard Communication Standard

THE SUPERFUND Amendments and Reauthorization Act of 1986 was aimed at protecting the environment against hazardous and toxic chemicals. Title I of SARA required that standards be defined for the protection of employees. The Occupational Safety and Health Administration took on this requirement as its responsibility. OSHA's response was the Hazard Communication Standard, often referred to as "Employees' Right to Know."

Kathy Seeger, a compliance specialist in OSHA's Region VII, described the OSHA Act of 1970 as "very well-established" and anticipated no changes that would affect the decorating products industry.

The Hazard Communication Standard, which Seeger said is part of the larger OSHA Act, consists of four major sections: a written communications program; a training program; Material Safety Data Sheets; and container labeling. Summarized below are the major responsibilities of retail employers in each of the four areas.

Written Communications Program

- Document plan in writing.
- Assign someone responsibility for the program.
- Inspect workplace and inventory all hazardous chemicals in workplace.
- Produce written list of all hazardous chemicals in workplace.
- Reference current MSDSs in written plan.
- Establish procedures for informing employees of hazards while they are performing non-routine tasks.
- Define procedures for informing on-site contractors of hazardous chemicals.
- Make written plan available to employees on request.
- Make sure labels on hazardous chemicals leaving premises contain specific information.

Employee Training Program

This program must cover:

- Methods for detecting hazardous chemicals in workplace;
- Hazards posed by the chemicals located in work areas;
- Measures employees can take to protect themselves from chemical hazards;
- Measures employees should take in response to chemical emergencies;
- Location of:
 - Written Hazardous Communications Program;
 - List of hazardous chemicals present in the workplace;
 - MSDSs and how to obtain them.

Material Safety Data Sheets

- Though manufacturers/distributors are required by law to send MSDSs with first product shipment, the retailer is responsible for having MSDSs on premises.
- Assign responsibility for maintaining MSDSs to specific individual.
- Within five working days of receiving new MSDS, post notice of its arrival and leave notice posted for at least 10 working days.
- Post signs informing employees of (1) location of MSDSs and (2) person to obtain them from.
- Employees must have ready access to MSDSs during working hours.
- Post sign for employees with Department of Health phone number.
- Provide MSDSs to customers on request.
- Organize MSDSs in consistent manner.

Container Labeling

Labeling on containers of hazardous substances must specify:

- Name of chemical;
- Appropriate hazard warning;
- Name, address, phone number of manufacturer or other responsible party.

sions in excess of 25,000 pounds. Also, non-manufacturers that release more than 10,000 pounds a year must complete the form.

Section 313 differs from other sections of EPCRA in that it identifies subject companies based on their size and industrial affiliation. Section 313, in part, reads as follows:

"The reporting requirement applies to owners and operators of facilities that have 10 or more full-time employees, that are in Standard Industrial Classifi-

cation (SIC) codes 20 through 39 (i.e., manufacturing facilities) and that manufacture (including importing), process or otherwise use a listed toxic chemical in excess of specified threshold quantities."

Said Elders, "Right now, Section 313 does not apply to companies which simply store or sell such chemicals. It applies mostly to manufacturers and processors."

Into the Retail World

Retailer Dave Evans, featured speaker for NDPA's Certified Coatings Consul-

tant Program and frequent lecturer on the subject of environmental regulations, is one of the experts predicting changes in EPA regulations.

Said Evans, "The EPA doesn't have a ton of regulations that affect the little guy—not yet, that is. At present, the dealer's only responsibility under EPA is to maintain Material Safety Data Sheets.

'The EPA doesn't have a ton of regulations that affect the little guy—not yet, that is.'

But as the minimum quantity that EPA says must be reported becomes smaller and smaller, the Community Right-to-Know law becomes more important to dealers."

Evans was referring to reductions in Threshold Planning Quantities (TPQ). EPA Engineer Elders confirmed that TPQs have repeatedly been lowered, offering this example: "In 1987, the threshold under Section 313 was 75,000 pounds. In 1988, the maximum dropped to 50,000 pounds. Then in 1989, the current threshold of 25,000 pounds was established."

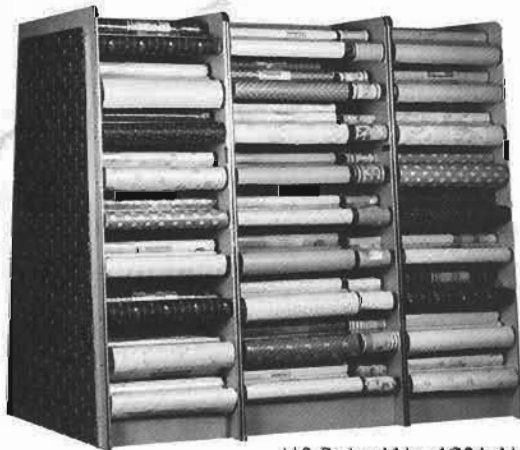
Elders agrees with Evans that EPCRA will affect more retailers in the future, but he sees EPCRA entering the retail ranks via a route other than lowered thresholds.

"There is some talk in Congress and at the higher echelons of the EPA right now about the possibility of expanding the number of SIC codes to which Sections 311, 312 and 313 apply," said Elders. "These sections currently apply to industrial classifications that include primarily manufacturers and processors." Companies within industries which store and/or sell the designated hazardous chemicals are logical targets for EPCRA expansion.

It's too early to say exactly *how* retailers will "qualify" for further EPCRA regulation—whether by lowered threshold quantities or through SIC revisions. It seems clear, though, that at some point in the not-too-distant future, retailers *will* be subjected to additional EPCRA reporting requirements. ■

(Janice K. Niehaus is a free-lance writer who lives in St. Louis.)

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