



Right to Know Laws: What You Need to Know

by Darshan Brach, Esq.

Building contractors have been subject for some time to laws that protect workers from conditions that are unsanitary, hazardous, or dangerous to their health and safety. Burdensome as these laws may feel sometimes, now the contractor may have a further responsibility under laws that may be applied to the construction industry. These are two federal "Right to Know" (RTK) laws, which contractors should know about: The first is administered by the Occupational Health and Safety Administration (OSHA) and the second by the Environmental Protection Agency (EPA), under the environmental "Superfund" law.

Right now their application to the construction industry is on hold while under court consideration. However, it is important for building contractors to be aware of these new responsibilities should the RTK provisions be reinstated. Both OSHA and the EPA believe the laws should apply to the construction industry.

The OSHA rule requires employers to evaluate hazards posed by chemicals that workers are exposed to. They are also required to educate their employees on these hazards and how to avoid them.

The Superfund environmental law requires employers to inventory and notify specified local and state authorities about hazardous and extremely hazardous substances if they are handled or released in certain quantities. This law also requires the appointment of a representative to act as liaison between the local authority and the facility.

Who Has to Comply with these Laws and Who is Protected?

In 1987, the OSHA rule was expanded to apply to contractors and subcontractors at job sites or projects. The law covers workers exposed to hazardous chemicals as part of their assigned jobs, either under normal operating conditions or in foreseeable emergencies. If the facility is subject to the OSHA rule, reporting requirements under two provisions of the Superfund law (Sections 311 and 312) apply. Because the OSHA rule requirements are "on hold" for the construction industry, the accompanying reporting requirements are as well. Three other provisions of the Superfund law apply independently of OSHA rule. In any case, these laws may apply if you use, handle, or release "hazardous" or "extremely hazardous" chemicals in certain amounts.

"Hazardous" and "extremely hazardous" have specific meanings under the OSHA and Superfund laws. The OSHA rule outlines criteria for evaluating whether a chemical is hazardous under its rule. The Environmental Protection Agency has lists showing whether a chemical is hazardous or extremely hazardous under the Superfund law.

What Do You Need to Do?

Once you know that you use a haz-

ardous or extremely hazardous chemical in amounts exceeding those specified, what will be required? Under OSHA's rule, also known as the "Hazard Communication Standard" (HCS), employers must set up hazard communication programs to educate their workers regarding chemical hazards. These programs must include:

- employee training about chemical hazards and appropriate protective measures
- container labeling and other forms or warning (such as signs)
- maintenance of material safety data sheets (MSDS) that contain information about the nature of the hazardous chemical it covers
- procedures for informing employees of the hazards of non-routine tasks
- procedures for informing subcontractors and their employees of hazardous chemicals.

OSHA recognizes that you don't have access to such information, so it requires producers of chemicals to evaluate the hazards and give that information to all buyers.

If you do not know enough about the hazards of your materials to develop appropriate signs and labels or to prepare material safety data sheets, never fear! OSHA recognizes that you don't have access to such information, so it requires producers or importers of chemicals to evaluate the hazards and give that information to all buyers. If your supplier does not give you this information, you should request it.

The Superfund law requires you to disclose information to various governmental bodies. These Superfund requirements may soon apply to you:

- Section 103: if you "release" a hazardous chemical (designated under the Superfund law) in an amount over a certain quantity, you must notify the National Response Center; 800/424-8802.
- Section 302: If you use certain specified amounts of "extremely hazardous" chemicals, you must notify the State Emergency Response Commission (SERC) within 60 days of getting the chemical.
- Section 303: You have to appoint a representative to act as a liaison between you and the Local Emergency Planning Committee (LEPC).
- Section 304: If "extremely hazardous" chemicals (as designated by the Superfund list) are spilled or released in quantities that exceed the reportable amount for that substance, you must notify the community emergency coordinator from the LEPC, unless the release exposes only persons on the site.
- Section 311: If you are subject to

the OSHA rule requirement of preparing material safety data sheets (MSDS), this provision requires you to submit an MSDS copy or a list of the hazardous chemicals to the LEPC, SERC, and the local fire department.

- Section 312: If you are subject to OSHA's hazard communication standard, you must submit an "Emergency and Hazardous Chemical Inventory Form" to the local fire department.

To comply with the OSHA rule, you must not only post warnings, but implement educational programs to ensure that your workers understand the hazards of the chemicals.

But Where Do You Get This Information?

The requirements and whether they apply to you are complex issues. You will probably need to consult a lawyer or a professional with expertise in this area. However, the best place to start with preliminary questions is the SARA Title III hotline at 800/535-0202. In addition to answering basic questions on these issues, you can use this hotline to get a copy of a "list of lists" of hazardous and extremely hazardous chemicals. In addition you can call the Occupational Health and Safety Regional Office in your area.

A Word to the Wise

Remember: What you and your employees don't know can hurt you.

Don't look for the easy way out! Employers who expect that off-the-shelf warning signs fulfill their responsibilities under OSHA may be sadly mistaken. In complying with the OSHA rule, you must not only post warnings, but implement educational programs to ensure that your workers understand the hazards of the chemicals to which they are exposed.

Similarly, be sure you know and fulfill your reporting duties under the Superfund law. To determine these duties several complicated issues must be resolved.

The best way to ensure that you meet your responsibilities under both of these laws is to consult an attorney or safety professional who is familiar with them. Complying with the requirements under the Superfund and OSHA law may be an added burden you don't feel you need, but it will save you headaches in the long run. ■

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