

BY MICHAEL BECKEL

Managing Regulatory Burdens

Hazardous materials can be found at virtually every construction project in the United States. Surprisingly to some, a brick is considered a hazardous material under the Occupational Safety and Health Administration's (OSHA) Hazard Communication regulations as a source of crystalline silica if cut or sawed.

Primer purchased at the local hardware store is a flammable liquid to a highway patrol officer enforcing U.S. Department of Transportation (DOT) regulations. Transportation of flammable liquids can entail preparation of hazardous material shipping papers, availability of spill response information and a driver trained and certified as a hazmat employee—even if the transport vehicle is a pick-up truck.

Potential employee exposure to any hazardous material triggers a written "HazCom" plan, according to OSHA requirements, including a hazardous material inventory, employee training and immediate availability of material safety data sheets (MSDS) for each hazardous product—including the brick.

More obvious hazardous materials common to construction sites include fuels, solvents and welding gases that bring a myriad of safety and environmental regulations. OSHA, the U.S. Environmental Protection Agency (EPA), the DOT and a virtual alphabet soup of state and regional agencies regulate the storage, use and transportation of hazardous material products.

Construction firms need flexible tools to manage their hazardous materials regulatory burdens. Often the best tool for this task is an outsourced environmental health and safety (EHS) company that speaks the regulators' language and makes compliance efficient and painless.

OSHA's Hazard Communication standard requires MSDS to be available to all employees. This can be challenging, particularly on multi-employer worksites because this requirement includes not only hazardous materials purchased by a specific employer, but also any hazardous materials brought onsite by subs or other contractors.

Some general contractors agree to maintain a central repository of all MSDS for the site and make it available to all construction workers regardless of employer. This system works as long as the repository is available at all times that any employee is working. If a contractor relies on another employer to provide access to MSDS for his employees, and at any time the MSDS are unavailable to the contractor's employees, that contractor can be cited by OSHA. Likewise, if a contractor agrees to provide MSDS access to another employer's workers and fails to do so, it also may be cited.

An outsourced EHS provider that provides MSDS electronically can provide a practical alternative to housing and maintaining written inventory lists at each construction site. The provider assumes responsibility for maintaining a current copy of the manufacturer's MSDS in a master inventory of products that might be on any of a contractor's locations, and makes MSDS available at all times when work can be performed. A provider should consider eliminating coverage failures related to weekend work or operations in multiple time zones.

An outsourced EHS provider can satisfy regulatory requirements for written inventories and MSDS, but it is up to the site manager to ensure that all site personnel have been trained and can access telephones, fax machines and/or computer terminals.

Construction sites routinely transport hazardous materials that fall under DOT regulations. The bad news is that DOT fines are high—up to \$32,500 for a single error. The good news is that most of the incidental transport of hazmat falls under the "materials of trade" exception. Some construction companies transport larger quantities of hazmat, and even those that do not can find themselves shipping fully regulated hazardous materials occasionally, such as returning unused material to a vendor or picking up propane.

An outsourced EHS provider that offers round-the-clock hazmat transportation assistance is a handy tool in either circumstance. Outsourced transportation professionals can classify hazmat, provide packaging, marking and labeling instructions, and can even fax completed shipping papers directly to any specified location. Site managers must ensure that employees transporting materials or offering to transport hazmat by a common carrier must be trained and certified, and they must ensure that their personnel notify the outsourced EHS company whenever a potential hazmat issue arises.

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