

CELLY SERVICES, INC.

Environmental, Health and Safety Services

DEALER ALERT

TO: Dealership Management
FROM: Sam Celly, MS JD CSP REA
SUBJECT: EPA/OSHA Liability from Contractors' Working for the Dealership
DATE: February 5, 2009

Dealerships' incur extra liability when they hire an outside contractor. The purpose of this Alert is to discuss some avenues of liability the dealership may encounter and certain remedies that may address those liabilities.

OSHA Issue I: The contractor painting automobiles on the premises must utilize proper engineering controls and provide proper Personal Protective Equipment (PPE). If the contractor is painting automobiles in any shape or form, a paint booth or its equivalent is required as an engineering control and a proper Respiratory Protection Program is to be implemented as well. OSHA may treat this as a Multi-Employer Worksite or a Dual-Employer Worksite and OSHA may give a citation to both the contractor and the dealership. (CA Labor Code Section 640-6413.5).

OSHA Issue II: A contractor must provide safety training to its employees. Failure to provide training, properly labeling chemicals, or usage of safety equipment can bring enforcement from OSHA as well.

OSHA Issue III: If a dealership employee complains to OSHA of noxious vapors or fumes from the painting operation, OSHA will investigate and cite the dealership for harmful exposure to its employees.

Air Pollution Control District (APCD): A maximum of 1 gallon of coatings can be applied without a permit from APCD but action will be taken if a neighbor complains of noxious fumes or vapors. APCD will enforce regulations requiring usage of approved paint guns and coatings with permitted Volatile Organic Compounds.

Sanitation District: The wastewater generated from washing activities must be disposed of via proper sanitary sewers. Any disposal to an adjacent lot or a storm drain can bring significant enforcement from the EPA under the Clean Water Act as well as the local County Department of Environmental Health, not to mention the fact that the dealership property can get contaminated leading to significant remediation expenses later.

EPA Compliance: The hazardous wastes generated at the facility must be disposed as a hazardous waste through a licensed hauler and proper manifest must be kept to document proper disposal. Improper disposal or incomplete documentation can bring enforcement from EPA.

General Liability: If the contractors' employee is injured on the premises, the employee may seek compensation from the dealership, specifically if there was supervision by dealership management or if the equipment that caused the injury belonged to the dealership. The dealership must refrain from supervision and not provide ANY equipment such as ladders or forklift to the contractor employees. Contractor must possess all licenses and permits for the job as well.

Safety Audit: The contractor must be audited by an independent safety consultant. If the dealership undertakes safety auditing or training for the contractor, then the employee of the contractor may bring action against the dealership for incomplete or improper training. The Workers' Compensation insurance, typically a shield against employee lawsuits, is not available against the contractors' employees. In summary, keep the safety issues related to the contractor at *arm's length*.

Remedies: The dealership must seek General Liability and Workers Compensation Insurance from the contractor and a *hold harmless* letter from the contractor to the dealership. The insurance policy should make the dealership additionally insured with rights of subrogation and the hold harmless letter must be drafted by the dealership attorney.

Misc Issues: If the contractor employs illegal aliens, action may be forthcoming from the Department of Homeland Security. Failure to pay minimum wage by the contractor may result in action by the IRS and other tax authorities. If a product installed by a contractor results in an accident, the dealership may protect themselves by requiring tail-end liability insurance from the contractor covering products and installation. Seeking installation of OEM products reduces liability as well. Contractors' employees involved in an accident when driving a dealership car can bring liability to the dealership. Contractor's insurance becomes critical in such circumstances.

Legal: The dealership must consult their lawyer to minimize exposure through properly drafted contracts and insurance.

The article was authored by Sam Celly of Celly Services, Inc. Sam has been helping automobile dealers comply with EPA & OSHA regulations since 1987. Send your comments to. sam@cellyservices.com.