

Golf Course Operations Must Supply Information About Hazardous Chemicals

By Michael Semler

AUTHOR'S NOTE: "This is not legal advice. Lawyers are not writing this column. If you want specific opinion(s) about your own operation, contact your club or golf course legal counsel."

Community right-to-know laws, which are designed to protect communities from chemical hazards in the event of emergencies such as fire, flood or spills, involve a complex network of legislation and regulation at the federal and state levels. The next couple of columns deal with these laws, rules and regulations. The first, which appears below, deals with the federal level; in the next issue we'll examine Wisconsin-specific requirements.

REMEMBER: If you have questions involving your own situation, contact your organization's lawyer.

The following information comes from the GCSAA.

— Michael Semler

Congress recently approved the largest appropriation to date — \$27 million for fiscal 1990 — for the U.S. Environmental Protection Agency to implement the federal right-to-know act, specifically to encourage local emergency planning. Congress also has ordered the Federal Emergency Management Agency (FEMA) to prepare, by March 31, a study on the major threats facing communities and local emergency management coordinators.

In 1986, the U.S. Congress enacted the Emergency Planning and Community Right-To-Know Act (EPCRA) as a response to growing concerns about the effects of chemical releases on communities. The act (1) supports emergency planning efforts at the state and local levels, (2) provides citizens and local governments with information concerning potential chemical hazards present in their communities and (3) establishes enforcement procedures and civil, administrative and criminal penalties for non-compliance.

Subtitle A establishes the framework for emergency planning by state and local governments by calling for the creation of state emergency re-

sponse commissions and local emergency planning committees. These local panels are designed to work on emergency response plans in cooperation with representatives of facilities — including golf courses — covered by the law.

Subtitle B, which was designed to provide information to appropriate local, state and federal officials on the type, amount, location, use, disposal and release of chemicals, includes three reporting provisions:

Section 311 applies to all facilities, such as golf courses, that are subject to the Occupational Safety and Health Act of 1970 and subsequent OSHA regulations. The owner or operator of a golf facility must submit material safety data sheets (MSDSs) or a list of the chemicals for which the facility is required to keep MSDSs to state emergency response commissions and local emergency planning committees and fire departments.

Updates are due within three months after OSHA regulations require the owner/operator to prepare or have available an MSDS for a specific hazardous chemical. A revised MSDS must be submitted for significant new

information regarding a chemical for which an MSDS was previously submitted.

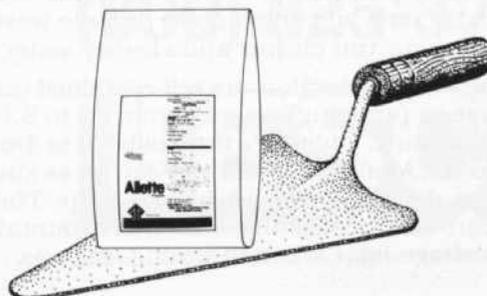
Also under Section 311, EPA can establish threshold quantities for hazardous chemicals, so that no reporting is required if a facility has a below-threshold amount of a hazardous chemical.

Section 312 requires facilities covered by Section 311 to submit a chemical inventory form annually by March 1. The inventory forms must contain an estimate of the maximum amount of the hazardous chemicals present at the facility during the preceding year, an estimate of the average daily amount of hazardous chemicals at the facility and the location of these chemicals at the facility.

Section 312 calls for two reporting "tiers." Tier I requires only general information on the amount and location of hazardous chemicals at the facility. Tier II information, which need not be submitted unless requested by the state commission or the local planning committee or fire department, requires more detailed information about each chemical.

Section 313 requires EPA to establish an inventory of toxic chemical

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emissions from facilities that meet certain criteria. The information will be used to establish a computerized national database accessible by the general public.

Under Section 313, owners and operators of certain facilities must complete a toxic chemical release form for specified chemicals, reflecting releases during the preceding calendar year, to be submitted to EPA and state officials annually on or before July 1.

Facilities that use more than 10,000 pounds of a single listed toxic chemical or that manufacture or process more than 25,000 pounds total of any of the listed chemicals must submit toxic chemical release forms. These forms request information on the maximum amount present at the location; treatment and disposal methods; and annual quantity released into the environment for each listed chemical or chemical category.

The initial list of toxic chemicals subject to reporting requirements consists

of 329 entries, including 20 categories of chemicals. EPA's administrator may add or delete chemicals on the list based upon an agency determination of health or environmental hazards. State governors and the public may petition the administrator to add to or delete from the list.

Title III of EPCRA outlines trade secret protection and enforcement procedures:

Section 322 applies to trade secret claims under reporting requirements for emergency planning and Sections 311, 312 and 313. Even if specific chemical identity of an extremely hazardous substance or chemical is allowed to be withheld as a trade secret, the generic class or category of the chemical must be provided.

Section 323 requires that chemical information withheld from the public as a trade secret must be made available to health professionals for diagnostic purposes and emergency assessment activities. In these cases, the person

receiving the information must be willing to sign a confidentiality agreement with the facility.

Section 325 provides for enforcement procedures and penalties as follows:

*civil penalties for owner/operators not complying with emergency planning requirements

*civil, administrative and criminal penalties for owner/operators not complying with emergency notification requirements following the release of a listed hazardous substance

*civil and administrative penalties for owner/operators not complying with reporting requirements in Sections 311, 312 and 313

*civil and administrative penalties for trade secret claims that are ruled frivolous

*criminal penalties for disclosure of trade secret information.

See your attorney for specifics on how this law affects your golf course.

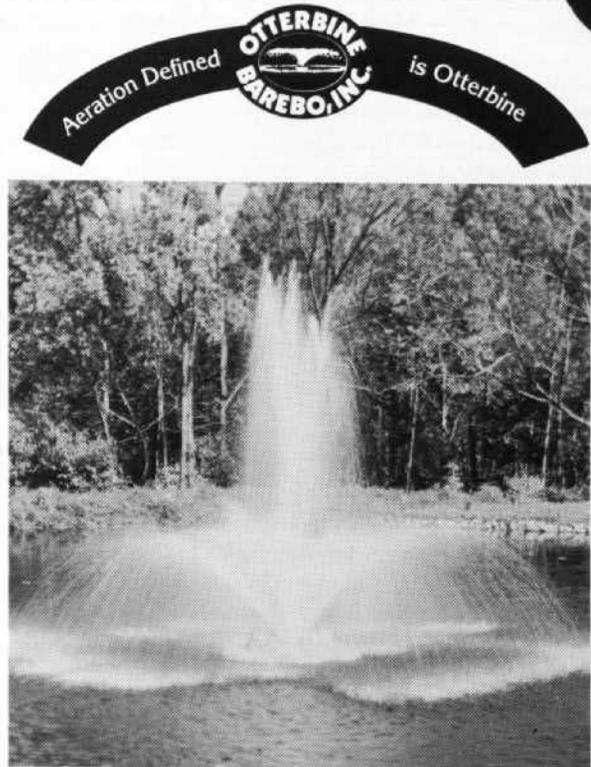
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