



AmericanCoatings
ASSOCIATION

Testimony
Before the US House of Representatives
Transportation and Infrastructure Committee
April 12, 2011

Mr. Chairman and members of the Committee,

My name is Sandra Chapman. I am the Director of Transportation – Corporate Regulatory Affairs for The Sherwin Williams Company. The Sherwin Williams Company was founded in 1866 and is the largest producer of paints and coatings products in the United States. I am also the Chair of the American Coatings Association’s Transportation and Distribution Committee. ACA’s Transportation and Distribution Committee actively participates and has “NGO” status at the United Nations Subcommittee of Experts on the Transport of Dangerous Goods under the umbrella of our international trade association, the International Paint and Printing Ink Council (IPPIC).

The American Coatings Association (ACA) is a voluntary, nonprofit trade association for the coatings industry, which includes paint, coatings of all types, and adhesives. In addition, we represent the raw materials suppliers, distributors, and technical professionals who serve the coatings industry.

Overall, the paint and coatings industry is comprised of approximately 900 manufacturing facilities in the United States which collectively produce more than one billion gallons annually. In 2007, the paint and coatings industry employed almost 350,000 people in this country in over 55,000 different establishments coast to coast, including Alaska and Hawaii. Because the paint industry is largely a “domestic industry” -- meaning that our industry continues to conduct all primary manufacturing inside the United States, we use all transportation modes to distribute products throughout the nation. Although the bulk of the industry’s products are shipped by motor and rail vehicles.

Paint, coating, and adhesive products consist of a wide range of products, including Class 2 aerosols, Class 3 Flammables, Class 8 Corrosives and Class 9 Environmentally Hazardous. While certain coatings products are regulated hazardous products, a significant portion of these products are not regulated because they do not meet the criteria for dangerous goods classification -- yet they look the same and are filled into containers that look almost identical to the containers for flammable, corrosive or environmentally hazardous paint.

I would like to address two issues for the Committee: the enhanced enforcement authority of the agency, recently published in a final rule; and the authority of PHMSA in the international arena which establish the standards and requirements for the transport of dangerous goods.

International Representation

In the international arena, there are several bodies that establish the standards and requirements for the transport of dangerous goods. This includes the United Nations Subcommittee of Experts on the Transport of Dangerous Goods, the International Maritime Organization, the International Civil Aeronautics Administration and several other organizations that work to ensure international hazmat safety and facilitate commerce through harmonization of hazmat regulations and standards.

PHMSA's work in these international forum over the years has been outstanding and has provided the United States a leadership role in establishing these standards. As recently as two years ago, a PHMSA principal was the Chair of the UN Subcommittee of Experts and even last year, PHMSA's International Standards Coordinator stepped up to serve in the Vice Chair capacity when the Chair became unavailable to complete his term. The UN Subcommittee of Experts is a multi-modal organization where deliberations and decisions made will have significant repercussions throughout the hazardous materials transportation industry in the highway, rail, vessel and air modes. Likewise, PHMSA is a multi-modal agency that has broad authority to oversee and coordinate the requirements for all modes. This broad, multi-modal vision is essential to the UN work and PHMSA must authorized and permitted to continue to serve in this capacity in the international arena.

Since 1967, the Secretary of Transportation has delegated the responsibility to lead and coordinate DOT's activities in these international forums to PHMSA. Recently, this delegation has been altered and it is no longer clear that PHMSA is the lead agency for this work. Indeed, in the most recent reorganization of the Office of Hazardous Materials, the International Standards Division appears to have been minimized as it has shrunk in staff resources and the current ISC is also serving as an Acting Director for another office within PHMSA. This situation is unacceptable and Congress should send a strong message to PHMSA that this work is paramount to the safety of transporting dangerous goods and by specifying that PHMSA should be the lead agency for this important work.

Enhanced Enforcement Authority

As a shipper, my industry understands that PHMSA is an enforcement agency and that its role is to ensure that shippers, carriers and others are complying with the hazardous materials regulations. In fact, we count on PHMSA to their job aggressively so that hazardous materials coming into our facilities are packaged, marked and labeled appropriately and we strive to do the same with finished goods that we send out of our facilities to distribution centers and retail stores. There is no doubt that PHMSA needs the tools to enforce the HMR aggressively but these enforcement tools must provide necessary protections predicated on safety and accountability.

PHMSA's partner in hazardous materials safety and enforcement are the state agencies and we highly recommend that DOT work closely with state enforcement personnel to provide consistent training on hazmat enforcement. Safety demands uniformity in the regulatory requirements and businesses must have uniformity in enforcement standards and procedures in

order to operate efficiently. In addition, in order to track more closely the transportation statistics for dangerous goods, we ask that Congress direct DOT to issue a report on hazardous materials shipments, deliveries, and movements on a periodic basis.

Historically, PHMSA's enforcement teams have had the authority to open and inspect a package under very limited circumstances. Following the ValuJet tragedy in 1996, amendments providing enhanced enforcement authority to the federal hazmat law were adopted to address the serious concern of "undeclared" hazardous materials -- materials that meet the hazardous criteria but are not packaged, marked and labeled accordingly and consequently it is unknown to the carrier that they are hazardous. However, in a very recent final rulemaking, PHMSA has interpreted this amendment language very broadly and is applying the enhanced authority to open and inspect packages to more than just those packages that are "undeclared". PHMSA intends to apply this authority to packages that are declared but may be in non-compliance with some aspects of the regulations. "Open and inspect" authority should be applied as Congress intended -- to undeclared packages. Applying this authority more broadly is dangerous to inspectors, carriers and members of the general public who may be in the vicinity.

Congress also must consider the broader safety and accountability concerns in this situation -- package opening activity should only take place "at a properly equipped facility designated by the Secretary for this purpose" in order to protect public health and safety. In addition, there should be notification to the shipper and offeror that a package is being removed from transportation for inspection and testing. There is no need to inform the package manufacturer. We urge Congress to include consider the impact to the shipper, carrier and consignee when a package is removed from transportation for inspection. Under a worst-case scenario, who is liable for an unintended release? This is a difficult situation and we ask Congress to include indemnification language intended to indemnify and hold harmless persons who are injured, including economic injury, by a release from a package that is opened or otherwise handled under this section.

With these additional safety and accountability norms, we believe that PHMSA will have the appropriate tools to aggressively enforce the HMR.

Mr. Chairman, we have provided specific language for your consideration and are happy to answer any questions at the appropriate time. Thank you very much for this opportunity to address the Committee.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
Truth in Testimony Disclosure

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name: SANDRA CHAPMAN

(2) Other than yourself, name of entity you are representing:

THE AMERICAN COATINGS ASSOCIATIONS, INC.

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

YES

If yes, please provide the information requested below and attach your curriculum vitae.

NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

NONE

J. B. Paulpe for Sandra Chapman 4.11.11
Signature Date

Sandra Chapman
Biography

Sandra Chapman is the Director of Transportation – Corporate Regulatory Affairs at the Sherwin-Williams Company in Cleveland, Ohio. Ms. Chapman came to Sherwin-Williams in 1997 and assumed her current role in 2001. As Director of Transportation, her responsibilities include providing company-wide guidance and direction with regard to the regulations governing the transport of dangerous goods by all modes of transport domestically and abroad; developing and implementing Company-wide transportation policies; and providing education and training in these areas throughout the Company.

Ms. Chapman achieved a Bachelor of Science from Ashland University in Ashland, Ohio and was awarded a Master of Science from the University of California at Santa Cruz.