

Dangerous Sealer Stayed on Shelves After Recall



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DENVILLE, N.J. — Walter E. Friedel’s plans to waterproof the tile floors of his hot tub room using Stand ’n Seal, a do-it-yourself product sold at his local [Home Depot](#), promised to be a quick weekend project, one he could wrap up in time to catch the Giants football game on a Sunday afternoon.

The product offered “a revolutionary fast way” to seal grout around tiles and, its label boasted, any extra spray would “evaporate harmlessly.”

“It sounds like no big deal,” Dr. Friedel said, looking back.

But instead of watching football that afternoon, Dr. Friedel, a 63-year-old physician, ended up being rushed to the hospital, where he would spend four days in intensive care, gasping for air, his lungs chemically inflamed.

Dr. Friedel was the latest victim of a product whose dangers had become known months earlier to the [Consumer Product Safety Commission](#) and the companies that made and sold it. Before Dr. Friedel bought Stand ’n Seal, at least 80 people had been sickened using it, two of them fatally.

But even then, with the threat well-documented, the manufacturer, retailer and the commission had failed to remove the hazard from the shelves.

The task of getting dangerous products out of consumers’ reach is perhaps the most pressing challenge the Consumer Product Safety Commission

faces in this era of surging recalls, particularly of products from China. It is an essential part of the agency's mission, because premarket testing is not required for consumer products in the United States.

Nancy A. Nord, the commission's acting chairwoman, said the agency was proud of its record of moving rapidly and forcefully to pull hazardous products off the market.

"The point is to get the recall out there, to get the consumer informed of what's happening and then try to get the product out of consumers' hands," Ms. Nord said in testimony to a House panel in September. "I think a recall process works very well."

But the Stand 'n Seal case is a powerful illustration of the commission's failure to fully live up to its mission.

Court documents show that, as the case unfolded, the product's maker, BRTT, appeared at times to be more concerned with protecting its bottom line than with taking steps to ensure that the hazard was removed. That meant that hazardous cans of Stand 'n Seal remained on the shelves for more than a year after the 2005 recall.

And the product that BRTT initially rushed to put in its place — and which Dr. Friedel and others bought — contained the same chemical that had apparently caused injuries in the first place, the company and Home Depot now acknowledge.

Critics say the Stand 'n Seal case demonstrates how the Consumer Product Safety Commission is too overwhelmed with reports of injuries and with new hazards to comprehensively investigate or follow up on many complaints. The agency's laboratory is also so antiquated it did not have the equipment necessary to evaluate fully the remedy BRTT offered — leaving the agency to rely largely on the company's promise that it would fix the problem.

And then, after receiving repeated complaints that the hazard persisted long after the recall, the agency failed to follow up adequately, documents show.

Even if the slip-ups were a result of companies having concealed important evidence, the commission still has a responsibility to use its enforcement powers to investigate and, if appropriate, to issue fines. To date, more than two years after the commission became aware of the problems with Stand 'n Seal, no fines have been issued.

“They did not get the job done that consumers expect, and people suffered as a result,” said R. David Pittle, who served on the commission for a decade after it was created in 1973, and later as technical director at [Consumers Union](#), which publishes Consumer Reports.

The problem is compounded because consumers often ignore warnings about unsafe products, or simply never hear them, and continue to use flawed products even after recalls have been issued.

A lawyer for BRTT, which was then known as the Roanoke Companies, declined to comment. Home Depot issued a statement saying it never knowingly sold a hazardous product.

“The Home Depot is working with Roanoke to make sure anyone injured from this product is treated fairly,” the statement said.

The commission’s own records show a growing list of products that have been subject to “expanded” recalls, like Stand 'n Seal.

“A recall is not necessarily a recall, that is what it comes down to,” said Stuart L. Goldenberg, a Minneapolis lawyer who represents a family whose child was injured using an Easy-Bake toy oven. The maker, Hasbro, alerted consumers about injuries to children’s fingers from the ovens, first simply offering a repair kit, but then expanding to a full-fledged recall after dozens of additional injuries were reported.

And evidence is widespread of hazardous products — even after recalls — being easy to find for sale, most notably imports from China that often are sold at discount shops or on the Internet. In one instance, Baltimore health officials found lead-contaminated toy rings in stores this year, three years after they had supposedly been pulled from shelves.

A New Ingredient

Stand 'n Seal seemed like the perfect do-it-yourself product when it came on the market in late 2003, for sale exclusively at Home Depot stores. Instead of having to use a paintbrush to apply waterproofing sealant to tile grout, customers could simply point the can and spray. A cardboard display at Home Depot stores featured a photograph of a mock customer doing just that — standing, with no mask, in front of a closed window, spraying the product onto a bathroom floor.

In the spring of 2005, one of Roanoke's suppliers — Easy Care Products of Scottsdale, Ariz. — switched the active ingredient from a chemical known as Zonyl 225, made by [DuPont](#), to a chemical called Flexipel S-22WS, made by a tiny Georgia company, Innovative Chemical Technologies, according to company documents. Roanoke executives were initially unaware of the switch, which was made for reasons that remain unclear, corporate e-mail messages show.

But only a few weeks after those reformulated cans reached Home Depot shelves, calls from customers, emergency rooms and doctors started to pour in to poison control centers and, initially in smaller numbers, to the Consumer Product Safety Commission's own hot line.

Terri Keenan of Kyle, Tex., was one of those callers. Ms. Keenan used the spray in late May 2005 to seal tile in her kitchen and bathroom. Within an hour or so, she began feeling dizzy, thirsty and short of breath. Minutes later, she started foaming at the mouth; then she could not get up from the ground. Her husband rushed her to the hospital, where she remained for five days.

“I just could not understand what was happening,” Ms. Keenan said in an interview. “It was a nightmare.”

In another case, an 11-year-old Colorado boy, Tyler Himmelman, had stopped to speak to his father, who was using Stand 'n Seal on a bathroom shower, when the boy began coughing, struggling to breathe and then vomiting. He, too, ended up in the emergency room, where doctors said about 80 percent of the surface area of his lungs had been damaged, said Sandie Himmelman, his mother.

Roanoke's initial reaction to the reports was to try to manage their public relations impact, documents show.

In early June, Richard F. Tripodi, Roanoke's chief executive, asked a staff member fielding calls at a 24-hour emergency number not to tell customers reporting illnesses that others had called with similar complaints, documents show. Doing so “may cause unnecessary public concern,” the staff member wrote in a case file.

Federal law requires manufacturers to notify the Consumer Product Safety Commission within 24 hours after determining that a product defect might present a health hazard. In this case, several weeks passed before that report was made; it was not until mid-June 2005 that Roanoke notified the agency, and only after a physician from the Rocky Mountain Poison and Drug Center in Denver, which also had been getting calls from emergency room doctors, told Roanoke that he planned to call the commission on his own.

Commission staff members quickly contacted Roanoke. But internal company and agency documents, which have become public as a result of lawsuits, suggest Roanoke tried to play down the hazard.

Roanoke explained that the revised Stand 'n Seal formula left it with a “somewhat less chemically pungent” smell, and that, as a result, “some customers tend to use the material in poorly ventilated or enclosed spaces.”

It did not mention that a safety data sheet published by the maker of Flexipel S-22WS explicitly stated that it should not be used in aerosol form because it could cause respiratory injury. Internal company documents show that Roanoke knew that even with ventilation, the spray containing Flexipel could cause a medical reaction. A Roanoke executive tested it in an office bathroom, with the exhaust fan running.

“I actually forgot I was performing a test and found myself leaning over the floor as I sprayed,” wrote the executive, Michelle Kascak, Roanoke vice president for research, in an e-mail message to Mr. Tripodi, her boss, before the recall. After the three-minute test, Ms. Kascak wrote that she had a mild headache, dizziness and sinus irritation.

Mr. Tripodi’s reply: “Please instruct us where to send the body when the test is complete.”

Jokes aside, Mr. Tripodi made it clear that he wanted to ensure the product remained on the market.

“We are doing everything to convince the Home Depot that there is no reason to take these batches off the shelf,” said one e-mail message Mr. Tripodi sent to a business associate in July 2005, as the company was negotiating the recall.

Nearly three months passed between the time Roanoke first received a report of an illness and the official recall by the Consumer Product Safety Commission, a period during which dozens were sickened. They included Phillip Willis III, 73, a retired Navy officer, from Pasco County, Fla., and Thomas Kayser, 64, of Independence, Iowa, a retired John Deere machinist, who soon died from their exposures, medical records show.

The agency sent investigators before the end of 2005 to the homes of two victims, in Arizona and Iowa, and tested at least one can of Stand ’n Seal. The tests give a basic indication of what was in the product: mostly butyle acetate, an industrial solvent, and hydrocarbons, chemical compounds based on crude oil.

But the agency's laboratory does not have the equipment needed to identify the specific chemicals present, or what effect they might have on humans, said Julie Vallese, a spokeswoman for the commission.

"There are a lot of things the agency should have," Ms. Vallese said.

As a result of its limited testing capacity, the agency took Roanoke's word that it had fixed the problem. But in fact, the company had not, and it re-supplied Home Depot stores nationwide with 50,000 cans of Stand 'n Seal that still contained the chemical implicated in the earlier illnesses. The only change was an additive to give the spray a stronger odor to signal to consumers that they should use the product in a ventilated area.

The Consumer Product Safety Commission has never publicly acknowledged that the threat remained. Its recall notice said that any can bought after June 2005 was safe.

Similar Problems

Dr. Friedel, a veteran physician, has a jovial air about him that quickly turns to agitation, then anger, when he discusses Stand 'n Seal. He knew nothing about the earlier trouble with the product when he went to the Home Depot.

"At least there should have been a sign," Dr. Friedel said of his Home Depot store in East Hanover, N.J., referring to the initial recall. "Without it, the consumer has no idea what they are getting into."

Dr. Jack Goldshlack, a pulmonologist who is still treating Dr. Friedel, said tests conducted after Dr. Friedel showed up at the hospital showed abnormal lung inflammation that limited his ability to get oxygen into his blood stream. After his release from the hospital, Dr. Friedel spent months taking oxygen-tank breaks in his office, as his lungs slowly recovered.

Interviews with a dozen other people turned up stories that are strikingly similar.

Andrew Lamer, a 24-year-old home contractor from Zeeland, Mich., who like Dr. Friedel bought one of those 50,000 cans used to restock the shelves, said he ended up in a hospital intensive care unit after using a can of Stand 'n Seal he bought in November 2005, four months after the recall.

Amy Paddock, 45, of Fridley, Minn., said she passed out in her car, after having felt ill and pulling to the side of the road, shortly after using the product in April 2006, and was also hospitalized.

Eileen Moreno, 50, an office manager from Fullerton, Calif., went to the hospital on Thanksgiving Day in 2006 — more than a year after the recall — after using Stand 'n Seal in her home. “I just couldn’t breathe, I could not even move,” Ms. Moreno said in a recent interview.

Her can had a lot number that showed it had been among the original batches that were recalled in August 2005 — but it remained on the shelf at Home Depot, as the retailer and Roanoke, which shared responsibility to remove these cans, had not completed the job.

Growing Evidence

The Consumer Product Safety Commission received several notices that the hazard associated with Stand 'n Seal continued, even after the recall.

Sandra Himmelman, whose son was injured before the recall, called the agency after she was startled to find one of the “recalled” cans still for sale at her local Home Depot, agency records show. “How could it still be for sale?” she said she asked.

Rick Ericksen, 59, a Mississippi state geologist, called the agency to report “uncontrollable shivering spasms that convulsed my entire body” after using Stand 'n Seal, as well as a “tremendous headache, nausea and a dry cough that wouldn’t stop,” agency records show.

An agency official, reviewing the complaint, noted in the report that the lot number on the can Mr. Ericksen had used in September 2005 “was not on the list of recalled cans.”

But Mr. Ericksen, Ms. Himmelman and others with similar complaints said they never received a response from the commission.

Roanoke had growing evidence that the problem persisted, documents show, including continued reports that went to the emergency call center about illnesses and a growing list of lawsuits based on injuries, many of them filed by consumers who used cans that were not among those recalled.

But it was not until March 2007, 18 months after the original recall, that Home Depot and Roanoke acknowledged the apparent source of the continuing problem.

The 50,000 cans used to restock the shelves in 2005, the companies conceded, “have been identified as containing the same potentially harmful formulation as the recalled batches,” a Home Depot statement said.

The hazard was finally eliminated this spring, as Home Depot removed Stand 'n Seal from the market entirely and posted a notice on its corporate Web site offering a refund to anyone who, after the recall, had bought one of the 50,000 cans.

The commission blames misinformation provided by the Stand 'n Seal suppliers for much of the breakdown. But at the same time, it acknowledges that it is the agency’s responsibility to detect and respond to bad information, and that it had failed to do so quickly in this case.

“Through investigations, the agency should be able to determine the accuracy of information being provided,” said Ms. Vallese, the commission spokeswoman. “Hindsight is really a great thing.”

The New York Times

<http://www.nytimes.com/2007/10/08/washington/08consumer.html?ei=5087&em=&en=49027b303063b262&ex=1191988800&pagewanted=all>