

## 5 Steps To Take Now For A Successful Recall Later

By Greg Ryan

*Law360, New York (May 16, 2013, 8:49 PM ET)* -- To ensure an effective recall, it's essential to plan ahead — a tough task for manufacturers when the production line is humming and the customers are smiling.

Some companies may worry that having a recall plan in place is an admission that a recall is possible. But experts told Law360 that such an outlook is more superstition than a sound legal stance.

"In the past, companies would say, 'We've never had a recall, it's not something we'd ever really need to worry about.' But for every company that's had a recall, there's been a first time," Faegre Baker Daniels LLP partner Sarah Brew said.

Smart manufacturers will take proactive steps to set themselves up for a recall, before that first one arrives, according to experts. Since each company — and each recall — is different, there's no one template for a recall plan, they said. But there are a few actions any manufacturer should consider.

Here are five steps to take immediately to avert disaster if and when a product defect emerges.

### Get Those Records in Order

Manufacturers often complain to regulators about the burden posed by recordkeeping requirements. But an efficient, reliable recordkeeping system is a godsend in a recall, experts said.

Poor recordkeeping could lead manufacturers to recall more or fewer products than necessary, depending on the circumstances. It could make it difficult to know which products or lots were exposed to contamination and which were not. An oversized recall costs manufacturers money, while an undersized recall leads to multiple expansions of an initial announcement, which causes distributors, retailers, regulators and consumers alike to lose confidence in a manufacturer.

In addition, making products easier to trace — by using serial numbers, for instance — can help manufacturers identify problems more quickly and keep recalls as narrow as possible.

Marking a product may not always make sense, such as in cases where the product is a small component of a much larger product, according to Kenneth Ross, of counsel at Bowman and Brooke LLP. Decisions about traceability should be made as early in a product's lifespan as possible, he said.

"If you're going to have traceability and marking on there, it has to be done while you're developing it," Ross said.

## **Have a Recall Team**

Manufacturers should assemble a team of employees who can devote themselves to a recall in the event one arises, according to experts. Teams should include at least one representative from each department that could be involved in a recall, including members of the legal, sales, engineering, quality control, customer service and public relations departments.

The team should also have a coordinator, typically a management-level employee, who makes major recall-related decisions after consulting with team members. Larger companies should seriously consider hiring a product safety director and other employees devoted to product safety, if they haven't already, experts said.

It is possible to overfill a recall team. If anything, though, manufacturers should worry more about having too few people.

"In a proactive policy, it is always better to identify too many people and then pare them back based on the actual issue that arises," Miles & Stockbridge PC principal Timothy Mullin said.

The number of team members participating in a recall can also vary by the situation, according to Keller and Heckman LLP partner Leslie Krasny.

## **Get Help, in Advance**

Manufacturers need not handle every aspect of a recall themselves. There are crisis management firms that write content explaining the recall to consumers. There are companies dedicated to handling consumer calls about recalls and providing them with a replacement product or another remedy. Other companies will help manufacturers retrieve recalled products from store shelves.

"They can, within 24 hours, have people in 1,000 stores taking it off shelves. You can't do that, but they can do that," Ross said.

Such specialists are especially helpful for smaller manufacturers that might not have enough employees to handle a large or widespread recall, at least quickly. But if a manufacturer waits for a recall to look for outside help, it's too late, experts said. Researching specialists can take days, time lost to product retrieval and public outreach.

"If the website goes down, if the call center has a busy signal, you've lost the battle. You're never going to recover from that," Mullin said.

If they're interested in specialists, manufacturers should investigate them and establish contact before a recall occurs, according to experts.

"It removes one more decision-making point at a time you're making a lot of decisions," Mullin said.

## **Look to Agencies for Guidance**

Manufacturers shouldn't necessarily involve regulatory agencies directly when they're devising a recall plan, according to experts. But they should look to any documents issued by the agencies related to what they expect a recall to look like, even if following them to a tee isn't usually adequate.

Companies should periodically review their recall plans to make sure they're up-to-date with changing regulatory requirements, according to Brew.

"For instance, Class I recalls may trigger Reportable Food Registry events. But many recall policies drafted before the reportable Food Registry do not include this component," she said.

### **Run a Mock Recall**

Manufacturers don't have to wait for catastrophe to strike to examine how prepared they are for a recall. Studies show that companies that perform mock recalls act better when the real event happens, according to experts.

"The best way for a company to figure out what might be missing from its plan is to do a comprehensive and challenging mock recall," Brew said.

Mock recalls should not involve sending notices to consumers, but rather to distributors, or at least first-tier distributors, according to Ross. That way, manufacturers can test the accuracy of the addresses they have for the companies, to ensure they can get word out about a recall as quickly as possible.

Manufacturers can create templates for emails or other types of communications to be sent to consumers in the event of a recall, Ross said. They may want to consider testing the template on a small group of consumers or even their own employees.

--Editing by John Quinn and Jeremy Barker.

All Content © 2003-2013, Portfolio Media, Inc.