

**REGFORM's Missouri Air Seminar**  
**The Clean Air Act Section 112(r)(1)**  
**General Duty Clause**

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# GENERAL DUTY CLAUSE – APPLICABILITY

- Under the Clean Air Act Section 112(r)(1), the General Duty Clause states:
- The owners and operators of stationary sources producing, processing, handling or storing such substances [i.e., a chemical in 40 CFR part 68 or any other extremely hazardous substance] have a general duty

# GENERAL DUTY CLAUSE – APPLICABILITY

- [in the same manner and to the same extent as the general duty clause in the Occupational Safety and Health Act (OSHA)]
- to identify hazards which may result from (such) releases using appropriate hazard assessment techniques,
- to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

## GENERAL DUTY CLAUSE – APPLICABILITY

- You don't have to submit an RMP because you lowered your regulated substance quantity on site.
- Question - Are you still subject to the General Duty Clause?

## GENERAL DUTY CLAUSE – APPLICABILITY

- You don't have to submit an RMP because you lowered your regulated substance quantity on site.
- Answer - Yes, if you use a regulated substance or any other extremely hazardous substance in any amount you are subject to the GDC.

# GENERAL DUTY CLAUSE – WHO IS COVERED

- The General Duty Clause applies to any stationary source producing, processing, handling, or storing regulated substances or other extremely hazardous substances.
- “Other extremely hazardous substances” are any chemicals listed in 40 CFR part 68, or any other chemicals, which may be considered extremely hazardous.

# HOW DO I MEET MY GDC OBLIGATIONS?

- The General Duty Clause is not a regulation and compliance cannot be checked against a regulation or submission of data.
- The General Duty Clause requires you to identify hazards your facility may present from accidental releases of hazardous substances, design and maintain a safe facility, and minimize the consequences of accidental releases which do occur.

# HOW DO I MEET MY GDC OBLIGATIONS?

- Generally, among other things, you should:
- (1) Adopt or follow any relevant industry codes, practices or consensus standards (for the process or facility as a whole as well as for particular chemicals or pieces of equipment),
- (2) Be aware of unique circumstances of your facility which may require a tailored accident prevention program, and
- (3) Be aware of accidents and other incidents in your industry that indicate potential hazards



# Elements to prove a violation of the GDC

- Failure to render workplace free of hazard
- Hazard recognized by specific facility or generally within the industry
- Hazard causing, or likely to cause death or serious harm
- Feasible means to eliminate or materially reduce the hazard
- In practice, where there is an accident, there is a violation of the GDC

# Enforcement Case Study

## EPA's Allegations

- Respondent is the owner of a commercial refrigeration facility that utilizes compressed anhydrous ammonia as a refrigerant (ammonia alleged to be above threshold quantity)
- Invitation to Pre-filing Negotiations mailed on April 22, 2016
- Initial penalty demand of \$228,622
- Allegations by EPA –
  - (a) Failure to develop a management system in violation of 40 CFR 68.15

# Enforcement Case Study

## EPA's Allegations

- (b) Failure to update off-site consequence analysis at least once every five years 40 CFR 68.36(a)
- (c) Failure to maintain records of offsite consequence analysis 40 CFR 68.39
- .
- .
- .
- (p)

# Enforcement Case Study

- How much ammonia is really handled or stored at Respondent's facility?

# Enforcement Case Study

## EPA's § 112(r)(1) Allegations

- a. failed to develop an adequate hazard analysis for the facility which identified all hazards associated with the process, in violation of Section 112(r)(1); and
- b. failed to develop accurate potential release scenarios and identify the consequences of a release, in violation of Sections 112(r)(1); and
- c. the facility's High Pressure Receiver and piping were badly corroded at the time of the inspection as the facility lacked a maintenance program and had not conducted inspections in accordance with recognized and generally accepted good engineering practices (RAGAGEP) to properly maintain equipment, in violation of Section 112(r)(1); and

# Enforcement Case Study

## EPA's § 112(r)(1) Allegations

- d. failed to properly train employees, in violation of Section 112(r)(1); and
- e. failed to have an accurate inventory of quantity of hazardous substances onsite, in violation of Section 112(r)(1).