



THE GENERAL DUTY CLAUSE

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 [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.”

WHAT IS THE GENERAL DUTY CLAUSE?

In the Clean Air Act Amendments of 1990, Congress enacted Section 112(r)(1), also known as the General Duty Clause (GDC), which makes the owners and operators of facilities that have regulated and other extremely hazardous substances responsible for ensuring that their chemicals are managed safely.

Facilities have been required to comply with GDC since November 1990.

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.

WHAT DOES THE GENERAL DUTY CLAUSE INVOLVE?

Facilities subject to the General Duty Clause are, among other things, responsible for the following:

- Knowing the hazards posed by the chemicals and assessing the impacts of possible releases,
- Designing and maintaining a safe facility to prevent accidental releases, and
- Minimizing the consequences of accidental releases that do occur.

WHAT IS THE CHEMICAL ACCIDENT PREVENTION PROGRAM?

Clean Air Act Section 112(r) also established the Chemical Accident Prevention Program dedicated to recognizing hazards and preventing accidents. It differs from the GDC in that it requires facilities that use listed toxic or flammable chemicals above certain thresholds to implement a specified set of accident prevention and emergency response program elements, and to submit a document called a risk management plan (RMP) to EPA. The RMP summarizes a regulated facility's hazard assessment, emergency response program, and accident prevention program information. Most of the information in a facility's RMP is also available to the public.

HOW DO I MEET MY GDC OBLIGATIONS?

It is important to understand that 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. 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.

Examples

- A facility installed a water-based fire suppression system in storage areas that contained water-reactive chemicals. This created a clearly hazardous condition. The General Duty Clause required the facility to install a fire suppression system that was compatible with water reactive chemicals.
- Preventing and mitigating accidental releases related to known equipment failure scenarios is a GDC obligation.

Answers to Your Questions

I don't have to submit an RMP because I lowered my thresholds – and I believe that I lowered my risk. Am I still subject to the General Duty Clause?

- Yes. If you use a regulated substance or any other extremely hazardous substance in any amount you are subject to the GDC.

How can I find out what GDC inspectors are looking for at my facility?

- Read the *Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1)* at: <http://www.epa.gov/oem/docs/chem/gdcregionalguidance.pdf>.

How can I find out about accidents and recognized hazards in my industry sector?

- Your trade association is a good place to start. OSHA and the Chemical Safety & Hazard Investigation Board periodically issue hazard bulletins and accident investigation reports. EPA also issues Chemical Safety Alerts and Enforcement Alerts on recognized hazards. EPA's Emergency Response Notification System (ERNS) is a useful first stop for tracking accidents.

How has OSHA's GDC been applied?

- Similar to the GDC of the Clean Air Act, OSHA's GDC applies when: (a) an employer fails to render a workplace free of hazard; (b) the hazard is recognized either by the employer or generally within the employer's industry; (c) the hazard causes or is likely to cause death or serious harm; and (d) there are feasible means by which the employer can eliminate or materially reduce the hazard.

What are the penalties for non-compliance with the GDC?

- The Clean Air Act Section 113(b) allows EPA to assess penalties of up to \$37,500 per day for each violation.

HOW DO I FIND MORE INFORMATION ON THE GENERAL DUTY CLAUSE, CHEMICAL SAFETY ALERTS, OR THE RISK MANAGEMENT PROGRAM?

RCRA, Superfund & EPCRA Information Center ("Call Center"):

Monday – Thursday, 10:00 a.m. – 3:00 p.m. EST
Extended Hours of Operation (May, June, and July):
Monday – Friday, 9:00 a.m. – 5:00 p.m. EST

800-424-9346 or TDD 800-553-7672
703-412-9810 or TDD 703-412-3323 (Metropolitan DC area callers please use this number)

Or see Web site at: http://www.epa.gov/emergencies/contact_us.htm#InfoCenter

Chemical Accident Prevention Program and RMPs:

<http://www.epa.gov/emergencies/content/rmp/index.htm>