



The General Duty Clarification Act

Issue Background

Under Section 112(r) of the Clean Air Act, facilities that produce, handle, process, store, or distribute chemicals must adopt certain procedures aimed at preventing accidental releases, including a Risk Management Plan (RMP). In addition to RMP, EPA has exercised authority over these facilities (which would include oil and gas producers, refineries, and chemical manufacturers and distributors) based on a broadly written section of the Clean Air Act known as the General Duty Clause (Section 112 (r)(1)). The 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.”

Despite the lack of definitions for the key terms in this General Duty section (including “extremely hazardous substance” and “appropriate hazard assessment techniques”), EPA has yet to issue any proposed rule detailing enforcement or compliance. Its one guidance document for government employees charged with enforcement was written in May of 2000 and cites the 1990 Clean Air Act Amendments Senate Report language to determine possible definitions of the vague terminology included in the General Duty Clause.

As part of the Homeland Security Appropriations Act of 2007, Congress explicitly assigned jurisdiction over chemical facility security to the Department of Homeland Security, which in turn developed the Chemical Facility Anti-Terrorism Standards (CFATS). Nevertheless, certain environmentalist interest groups are calling for EPA to actually expand its use of the General Duty Clause to include regulation of chemical facility security.

Examples

There have been numerous incidents over the last several years involving EPA fines under the General Duty Clause. For example, EPA Region 6 (AR, LA, NM, OK, TX) issued 23 Administrative Orders in 2011 under the General Duty Clause for a total of \$108,743 in

injunctive relief. In EPA Region 1 (CT, MA, ME NY, RI, VT), two manufacturing and distribution facilities were fined \$179,000 under the General Duty Clause. After finding facilities in violation, EPA readily admitted that “*several companies were unaware that the Clean Air Act’s General Duty Clause can apply even when Risk Management Program regulations do not.*”

Solution: Support the General Duty Clarification Act

Given EPA’s use of the broadly written and ill-defined General Duty Clause against facilities, and the potential for EPA to bypass Congress and regulate chemical facility security, Congressman Pompeo has introduced the General Duty Clarification Act. Specifically, the legislation would:

- Require EPA to complete a rulemaking process before finding any facility in violation of the General Duty Clause.
- Require definitions of “extremely hazardous substance,” “appropriate hazard assessment techniques,” and “design and maintain a safe facility” in any General Duty Clause regulation.
- Require EPA to issue guidelines to ensure that EPA enforcement procedures are uniform across its Regions.
- Clarify that EPA’s mission is environmental protection, not homeland security, by prohibiting EPA from regulating chemical facility security under the General Duty Clause, reinforcing exclusive jurisdiction under the Department of Homeland Security.

The General Duty Clarification Act is a commonsense effort to enhance chemical process safety and risk management by providing facilities with greater certainty in complying with the Clean Air Act’s Accidental Release provisions.

For more information, please contact the Office of Congressman Mike Pompeo at (202) 225-6216.