



The U.S. Environmental Protection Agency (EPA) is stepping up inspections of municipal operations that store and use hazardous materials, particularly [Extremely Hazardous Substances \(EHS\)](#). If your facility uses or stores chemicals above threshold limits, you may be required to comply with several federal regulations to ensure that these chemicals are managed safely.

In the past several years, the EPA has visited numerous municipal services in New England to determine compliance with the Clean Air Act's chemical accident prevention requirements and the Emergency Planning and Community Right-to-Know Act. Of particular concern are the chlorine and ammonia used in municipal water and waste-water treatment facilities, ice rinks, as well as in swimming pool facilities. Based on EPA's inspections, some of these facilities were found to be managing their chemicals in an unsafe manner. EPA inspections revealed deficiencies in management systems, the upkeep of process-related equipment, and safety and process procedures. As a result, **the EPA has taken enforcement actions and assessed substantial penalties against several municipal facilities in New England.**

**[Clean Air Act \(CAA\) Section 112\(r\)\(7\)](#):** Risk Management Program (40 C.F.R. Part 68) requires facilities that have threshold quantities of certain regulated chemicals in a "process," such as chlorine and ammonia to develop a Risk Management Program (RMP). ([View EPA's RMP Process Checklist](#)). Facilities, among other requirements, have an obligation to:

- Analyze the worst-case release scenario to determine the potential effects of a release;
- Conduct an analysis to identify and resolve hazards associated with the process;
- Have a release prevention program, with requirements to (a) compile process safety information about the chemicals, equipment, and industry standards that apply to the process and ensure compliance with such standards; (b) use safe operating procedures; (c) train employees; (d) maintain equipment integrity; (e) conduct compliance audits; and (f) investigate incidents;
- Submit a Risk Management Plan, which is a summary of the Program, to EPA, and update it every five years or as changes occur;
- Comply with comprehensive emergency response planning requirements, including coordination with the local emergency planning and response agencies.

**[CAA Section 112\(r\)\(1\): General Duty Clause](#)** requires owners and operators of facilities that have an quantity of an EHS (including chlorine and ammonia) to manage their chemicals safely. **They must:**

- Identify hazards that may result from accidental releases, using appropriate hazard assessment techniques (such as a "What-if" analysis);
- Design and maintain a safe facility, taking such steps necessary to prevent releases; and
- Minimize the consequences of accidental releases that may harm the surrounding area.

Some points to remember about the General Duty Clause (GDC):

- The GDC is **not limited** to the chemicals subject to the RMP regulations;
- The GDC applies **facility-wide**, regardless of the amount of chemical stored;
- In analyzing the standard of care to which the facility is subject, EPA consults industry standards, codes, and practices; and
- Facilities should prioritize safety considerations based on the facility's site; for example, if it is in close proximity to residential neighborhoods, schools, sensitive ecosystems, or to other hazardous chemical sources.

**Emergency Planning and Community Right-to-Know Act (EPCRA)** Sections 311 & 312: MSDS Notification and Tier II Reports (40 C.F.R. Part 370) requires facilities that have hazardous chemicals (i.e. those that require a SDS) in threshold quantities to:

- SDS Notification – submit copies of SDS or, alternatively, a list of chemicals, to the local Fire Department, State Emergency Response Commission, and Local Emergency Planning Committee. This is a one-time notification.
- Tier II Reports – submit an inventory of the chemicals, including chemical name, quantity and location, annually by March 1. ([Notification Summary Table.](#))

**EPA can assess penalties of up to \$37,500 per violation under Section 112(r) of the CAA and EPCRA.** ([View Summary of EPCRA Sections 302-311.](#)) An EPA [enforcement policy statement](#) indicates that an "appropriate response will achieve a timely return to compliance and serve as a deterrent to future non-compliance by eliminating any economic benefit received by the violator from its noncompliance."

*CIRMA Risk Management is working with members to help them better understand the EPA requirements and inspection process. Please contact your Risk Management Consultant or the EPA for more information.*

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