

Increased focus on the General Duty Clause of the Clean Air Act

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The General Duty Clause (“GDC”) codified in Section 112(r) of the Clean Air Act (42 U.S.C. §§ 7401-7671) (“CAA”) has received national attention in the past year due to significant monetary penalties being imposed on manufacturers who failed to comply with the GDC. Specifically, D.D. Williamson and Co. and First Chemical Corp. consented in separate settlements to pay civil penalties in the amount of \$1,331,000 and to implement remedial measures to resolve residual claims and environmental issues arising out of a 2003 explosion at a facility located in Louisville, Kentucky, which killed one individual and released dangerous amounts of ammonia into the air in the surrounding communities. These cases have caused many manufacturers and businesses to question whether their current operations satisfy the GDC.



The GDC dictates certain general duty of care requirements on owners and operators of stationary sources producing, processing, handling, or storing hazardous substances. The primary focus of the program is on hazardous substances which are known to cause injury, death or serious adverse effects to human health or the environment.

The GDC mandates that such owners and operators (1) adequately design and maintain a secure and safe facility which produces, processes, handles or stores hazardous substances; (2) use approved methods to research and identify potential hazards that may occur as a result of any accidental release of a hazardous substance; (3) take all reasonable and necessary measures to prevent a release from occurring, and (4) in the event of an accidental release, immediately respond and take all possible measures to minimize the consequences of the release on human health and the environment. In addition to these duties, if a facility stores or processes certain extremely hazardous substances in quantities above those specified in the GDC, the owner/operator must design and implement a detailed risk management plan in accordance with EPA regulations. However, the GDC applies to all facilities which handle hazardous substances identified by the EPA, regardless of the quantity involved.

Specifically, the EPA interprets the GDC as requiring manufacturers, municipalities and other entities handling hazardous substances identified in 40 C.F.R. Part 68 to: (1) “adopt or follow any relevant industry codes, practices, or consensus standards;” (2) “be aware of unique circumstances that require a tailored accident prevention program;” and (3) “be aware of accidents and other incidents in the industry that indicate potential hazards.”

While the GDC does not itself create an independent cause of action for bodily injury or property damage resulting from an accidental release, it may establish a standard of care that could be used as evidence in a civil lawsuit involving claims of negligence. Plus, as noted above, the EPA is authorized to impose significant monetary penalties and injunctive relief for violations of the GDC.

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