

RMP and the General Duty Clause: Industry Perspective

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No. 1

**The
World's
Chlorine
Leader**



The **No. 1 global** chlor alkali producer with largest chlorine production capacity.



The **No. 1 global** supplier of epoxy materials.



The **No. 1 global** seller of membrane caustic soda and chlorinated organics.



The **No.1 North American** seller of chlorine, bleach and hydrochloric acid.

RMP Compliance

- Responsible Care
- Robust Risk Management Program at each of our ten Program 3 facilities
- Corporate management systems to ensure continuous improvement
- In Olin's experience, RMP is integrated into daily operations and is a part of our corporate safety culture

RMP Rule Update

- Published in January, 2017.
- EPA's final rule is a product of substantial controversy. Culminates an administrative rulemaking process that spanned several years and generated over 61,500 public comments from various stakeholders, including government agencies, industry, and environmental groups.
- The final rule was scheduled to go into effect sixty days after publication in the Federal Register.
- On March 13, EPA granted a request for a motion for reconsideration of the rule filed by trade associations, setting up the possibility that EPA will alter or rescind the amendments to the rule.
- On March 16, 2017, EPA issued an administrative stay to delay the effective date of the rule until June 19, 2017. The 90-day extension will allow time for EPA to consider whether to further extend the effective date of the rule through a rulemaking action while the Agency reconsiders the rule in response to a petition received in February 2017 from the RMP Coalition.
- On April 3, 2017, EPA published a proposed rule that would delay the effective date of the RMP rule amendments to February 19, 2019. EPA will take comment on the proposed delay in the effective date of the RMP rule amendments until May 19, 2017.
- Both houses of Congress have filed resolutions seeking to repeal the RMP amendments under the Congressional Review Act (CRA).

EPA's Proposed Rule: Industry Perspective

- The rule imposes significant new regulatory burdens and costs on regulated companies without significant benefit in reducing the risk of accidental chemical releases.
- The rule includes new mandates for third-party compliance audits, safer technology and alternatives assessment, and a lack of protection for sensitive business and security information.
- Olin is a member of the RMP Coalition, established to provide a coordinated industry response to the proposed Rule.
- The RMP Coalition is comprised of the American Chemistry Council, the American Forest & Paper Association, the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the Chamber of Commerce of the United States of America, the National Association of Manufacturers, and the Utility Air Regulatory Group.

The General Duty Clause

It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or **any other extremely hazardous substance**. The owners and operators of stationary sources producing, processing, handling or storing such substances have a **general duty** ...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.

The General Duty Clause

- Sec. 122(r)(1) of the Clean Air Act: Owners/operators of stationary sources producing, processing, handling or storing extremely hazardous substances in any quantity have a “general duty” to make sure that these chemicals are managed safely.
- “General Duty” to design, maintain and operate a “safe facility.”
- Not limited to RMP facilities – ANY facility with ANY extremely hazardous substance in ANY amount.
- According to EPA, satisfaction of the more specific risk management plan (“RMP”) requirements does not necessarily equate to satisfaction of the General Duty Clause.
- This obligation includes:
 - Knowing the hazards posed by chemicals at the facility
 - Assessing the impacts of a potential release
 - Designing and maintaining a safe facility to prevent accidental releases
 - Minimizing the consequences of accidental releases that do occur

General Duty Clause: What chemicals does it apply to?

Whatever chemicals EPA says it applies to.

General Duty Clause: What's a "safe facility?"

Whatever EPA says it means.

General Duty Clause: What constitutes a “safely designed facility”?

Whatever EPA says it means.

So, how do you comply with your “general (confusing) duty?”

“When I use a word it means just what I choose it to mean...”



Difficulties for Industry

- Regulated entities have to ensure compliance, but the General Duty Clause is not explicit as to what measures constitute compliance.
 - How is compliance achieved and how is compliance measured?
- EPA interprets the General Duty Clause as applying to virtually any chemical.
 - What chemicals and in what quantities trigger coverage?
- Without a defined standard, it is difficult to check compliance.
 - How do your environmental management systems lower your risk of non-compliance?
- How much hazard prevention is enough?

What do I need to do?

- Best practices:
 - Know your chemicals and their hazards
 - ALL
 - Are your environmental management systems effective in identifying all hazards? How to identify hazards?
 - Know your facility and any unique circumstances
 - Consider risks posed by neighboring facilities
 - Network with local emergency responders and community
 - Assess your operations and practices regularly
 - Self audits (At a minimum, are you doing what you say you do?)
 - Training exercises
 - Engage with Industry Advocacy and Trade Groups
 - Understand established industry practices and standards and their applicability to your facilities
 - Monitor GDC enforcement in your EPA region to become familiar with EPA's most current GDC interpretations