



EPA Criminal Penalty for RMP Violations at Cold Storage Ammonia Refrigeration Warehouse

On December 16, 2020, a cold storage warehouse and ice manufacturing facility in East Providence, Rhode Island, [entered into a guilty plea with the Justice Department](#) for a “knowing” criminal violation of Clean Air Act section 112(r)(7), [42 USC 7412\(r\)\(7\)](#), in connection with EPA’s Chemical Accident Prevention Program and requirement to submit a risk management plan (RMP) under 40 CFR Part 68. The facility used a refrigeration system to manufacture and store ice and other frozen products, with 19,000 pounds of anhydrous ammonia in the refrigeration process.

The plea agreement underscores the continuing trend of EPA and DOJ seeking criminal enforcement of the Clean Air Act’s accidental release provisions and charging defendants for “knowing” violations of the 112(r) program, or by utilizing other enforcement mechanisms, such as the negligent release crime at CAA section 113(c)(4), [42 USC 7413\(c\)\(4\)](#). The facts in this case are similar to prior 112(r)(7) RMP criminal enforcement cases pursued by [Region 1 EPA](#) (failure to develop and implement an RMP) and [Region 2 EPA](#) (failure to implement an RMP). And the enforcement aligns with the EPA’s emphasis on reducing accidental chemical releases at industrial chemical facilities, one of EPA’s current [National Compliance Initiatives](#).

Ammonia [refrigeration systems](#), in particular, have been a focus by the EPA, including [EPA Region 1](#). The agency has a number of [guidance materials](#) and [documents related to best practices](#) and enforcement concerning food manufacturing, cold storage facilities, and related warehouses and [refrigeration systems](#) that use [anhydrous ammonia as an industrial refrigerant](#).

The cold storage facility owned and operated by J.P. Lillis Enterprises, Inc., (d/b/a Cape Cod Ice), had received numerous previous inspections by EPA and OSHA – under the Process Safety Management standard – between 2012 and 2017, with noted deficiencies regarding storage and use of anhydrous ammonia, including a prior EPA civil enforcement case in 2012 for failure to develop and implement an RMP with a [Consent Agreement and Final Order](#). Repetitive conduct and failure to learn lessons are among the factors that federal prosecutors and investigators with [EPA's Criminal Investigation Division](#) consider in determining whether to seek criminal charges.

In addition to criminal enforcement, [EPA continues aggressive civil enforcement for RMP violations](#) for facilities that use and store anhydrous ammonia ([December 2020 – food producer settles \\$186,000 case](#)), as well as accidental release cases ([December 2020 – refinery pays \\$191,000 to resolve claims from chemical release during maintenance activities](#)).

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