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EPA Issues Enforcement Alert Targeting Warehousing and Distribution Facilities Storing Chemicals

Companies that manage chemicals in warehousing, distribution, and logistics facilities remain a high-priority enforcement focus of the U.S. Environmental Protection Agency, as reflected in the recently issued Enforcement Alert. Citing the agency's current National Compliance Initiative entitled "Reducing Risks of Accidental Releases at Industrial and Chemical Facilities," the Enforcement Alert reminds businesses that process, formulate, blend, re-package, store, transport, and market chemical products must adhere to a variety of federal EPA rules and the consequences for the failure to do so.

RMP and GDC

EPA has a chemical accident prevention program under the Clean Air Act regulating the manufacture, use, or storage of extremely hazardous substances above threshold quantities. EPA's program requires owners and operators of applicable facilities to submit a Risk Management Plan (RMP) under EPA's 112(r)(7) regulatory program. EPA's RMP program is a corollary to OSHA's Process Safety Management Program under 29 CFR 1910.119. And similar to OSHA, the EPA has a General Duty Clause provision under 112(r)(1) which may require facility owners and operators to undertake safe management practices, even for chemicals and substances which are not listed EHS or used above threshold quantities.

EPCRA

In addition to the RMP and GDC obligations, EPA's Enforcement Alert also reminds chemical distributors and warehousing operators to notify the government and submit annual inventory reports under the Emergency Planning and Community

Right-to-Know Act (EPCRA). In particular, EPCRA section 311 requires the submittal of Safety Data Sheets (SDS) to their State Emergency Response Commission, Local Emergency Planning Committee (LEPC) and local fire department, and EPCRA section 312 requires annual inventory submittal forms if chemicals are present about certain quantities (i.e., Tier II Reports).

Notably, EPA provides a summary of common inspection findings and violations, including, the failure to account for the chemicals in all containers (including aerosol cans), failure to file an RMP due to insufficient inventory facility management systems, or failure to submit a Tier II form, SDS, or Form R under the EPCRA section 313 Toxic Release Inventory program.

EPA's Enforcement Alert also distills the following lessons learned:

- Lack of good inventory management leads to RMP and EPCRA violations for having chemicals present over regulatory thresholds.
- Lack of attention to solutions or mixtures leads to incorrect calculation of threshold quantities for reporting.
- Employees need clear information on how to avoid co-location of incompatible chemicals.
- Facilities should ensure that their buildings are structurally appropriate for the storage of chemicals and equipped with proper fire protection (e.g., alarms, sprinklers, etc.).
- Awareness is needed when RMP requirements apply.
- Facilities need to coordinate with local emergency responders.
- A maintenance and prevention program for pipes, valves, and tanks is needed. The program should include how to achieve appropriate tank integrity and secondary containment.
- Facilities need to address the storage of chemicals with appropriate aisle space and segregated incompatible chemicals appropriately.

EPA's Enforcement Alert also underscores the repercussions for violating the RMP/GDC and EPCRA regulatory programs, by summarizing recent civil and criminal enforcement actions pursued against chemical warehouse and distribution owners and operators.

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