

Penalty for Non-Compliance in the US and Canada

Summary

The United States and Canada both have a number of regulations that need to be complied with in order to manufacture or import chemical products in these countries. The chemical inventories schemes are one of the main requirements for chemical management in both the U.S. and Canada.

United States

Toxic Substance Control Act (TSCA) is the governing legislation regulating chemical inventory scheme controlled by the US Environmental Protection Agency (EPA). TSCA requires all chemicals that fall under the regulation that are manufactured including import and used for commercial purposes either be listed on the TSCA chemical inventory or have an appropriate notification approved by the EPA. The US TSCA chemical inventory will be revised in late 2017 to include only chemicals in active use in the US since 2006.

TSCA violations are subject to enforcement fines by the US EPA. The EPA requires violations to be self-reported within 15 days of finding the violation. The fines are a minimum of \$37,500. Depending on the type of non-compliance, the fine can be calculated based on the number of days of non-compliance. In addition to the monetary fines, if the EPA considers the non-compliance was willful, the fine can increase and jail time may be included as part of the penalty.

Typical TSCA violations are: inaccurate or missing records of TSCA compliance, failure to submit within 30 days a Notice of Commencement (NOC) for a Pre-manufacturing Notification (PMN), failure to submit a Chemical Data Report (CDR) when required and refusal to allow EPA to audit your facility.

Enforcement actions including fines are announced in the US Federal Registry. So in addition to any monetary fines, violations are public knowledge and can impact a company's reputation.

Canada

The chemical inventory in Canada is controlled Canadian Environmental Protection Agency (CEPA) as part of by Ministry of the Environment and the Ministry of Health is split into 2 sections: The Domestic Substance List (DSL) or Non-Domestic Substance list (NDSL).

Violations of CEPA are subject to administrative monetary penalties (AMPs) under the Environmental Enforcement Act (EEA). The AMPs were created to create financial disincentive for violations. The AMPs are dependent on whether the violation has been committed by an individual or a corporation. The AMP for corporations with < \$5 million in revenue in the last 12 months is a minimum of \$25,000. Larger corporations are subject to an AMP of a minimum of \$100,000. The AMP can go as high as \$ 6 million. Canadian courts can also mandate that a corporation pay an additional fine equal to any benefit, advantage or property gained as a result of the violation. Canadian courts may lower the penalty if it would create a financial hardship.

Typical CEPA violations are failure to comply with requirements for listing on DSL or NDSL and failure to submit an appropriate notification under CEPA.

Enforcement actions including AMPs are considered public knowledge in Canada. So in addition to monetary fines, violations are public knowledge and can impact a company's reputation.

The Province of Ontario currently has its own chemical inventory based on the initial 1977 US TSCA chemical inventory. There are currently no enforcement requirements for non-compliance other than possible allowing a non-compliance to become public record.