

Massachusetts Contingency Plan

Effective Date: October 29, 1999

Excerpt: 310 CMR 40.0321

40.0321: Reporting of Releases and Threats of Release that Pose or Could Pose an Imminent Hazard

(1) For the purpose of fulfilling the "Two Hour" release notification obligations of 310 CMR 40.0311(7), the following releases shall be deemed to pose an Imminent Hazard to health, safety, public welfare and/or the environment:

- (a) a release to the environment which results in the presence of oil and/or hazardous material vapors within buildings, structures, or underground utility conduits at a concentration equal to or greater than 10% of the Lower Explosive Limit;
- (b) a release to the environment of reactive or explosive hazardous material, as described in 310 CMR 40.0347, which threatens human health or safety;
- (c) a release to a roadway that endangers public safety;
- (d) a release to the environment of oil and/or hazardous material which poses a significant risk to human health when present for even a short period of time, as specified in 310 CMR 40.0950;
- (e) a release to the environment of oil and/or hazardous material which produces immediate or acute adverse impacts to freshwater or saltwater fish populations; or
- (f) a release to the environment which produces readily apparent effects to human health, including respiratory distress or dermal irritation.

(2) For the purpose of fulfilling the "Two Hour" release notification obligations of 310 CMR 40.0311(7), the following releases could pose an Imminent Hazard to human health:

- (a) a release to the environment indicated by the measurement of oil and/or hazardous material in a private drinking water supply well at a concentration equal to or greater than ten times the Category RCGW-1 Reportable Concentration, as described in 310 CMR 40.0360 through 40.0369 and listed at 310 CMR 40.1600; or
- (b) a release to the environment indicated by the measurement of concentrations of hazardous material, equal to or greater than any of the following concentrations of hazardous material in surficial soil (within a depth of 12 inches, but as close to the surface as possible), at any location within 500 feet of a residential dwelling, school, playground, recreation area or park, unless access by children is controlled or prevented by means of bituminous pavement, concrete, fence, or other physical barrier:

Hazardous Material Concentration	CAS	number
-------------------------------------	-----	--------

		(ug/g dry wt)
Arsenic (total)	7440382	40
Cadmium (total)	7440439	60
Chromium (VI)/Total Chromium	18540299	200
Cyanide (available)	57125	100
Mercury (total)	7439976	300
Methyl Mercury	22967926	10
PCB (total)	1336363	10

or

(c) a release to the environment for which estimated long-term risk levels associated with current exposures are greater than ten times the Cumulative Receptor Risk Limits in 310 CMR 40.0993(6). Past exposures may be included in such evaluations to the extent that it is reasonable to quantify those exposures.

(3) For the purpose of fulfilling the notification obligations of 310 CMR 40.0312(2), threats of release which pose or could pose an Imminent Hazard to health, safety, public welfare and/or the environment shall consist of any threat of release where, if the release were to occur, it is likely that that release would meet any of the criteria described in 310 CMR 40.0321(1) or 40.0321(2).

(4) Notwithstanding the provisions of 310 CMR 40.0321(2) and 40.0321(3), a person required to notify under 310 CMR 40.0331 may demonstrate to the Department by a preponderance of the evidence that release or site conditions specified in 310 CMR 40.0321(2) and/or 40.0321(3) do not constitute an actual Imminent Hazard to human health, in conformance with the Imminent Hazard Evaluation process described in 310 CMR 40.0426, and in consideration of the site-specific factors and the risk assessment and risk management criteria contained in 310 CMR 40.0950. No such demonstration, however, shall relieve any person of the obligation to notify the Department of a release or threat of release under the provisions of 310 CMR 40.0311 or 40.0312.

(5) No provision contained in 310 CMR 40.0321 shall limit the Department's authority to determine that an Imminent Hazard exists at any site, consistent with the provisions of 310 CMR 40.0950, nor shall any such provision limit the Department's authority to undertake response actions, seek any reimbursement or compensation due to the Commonwealth, or pursue enforcement actions in accordance with any such determination.