

Imminent Threat

The Toxics Use Reduction Act states that “Any information or record, in document or electronic format, received by the office in the course of providing technical assistance to a toxics user shall be kept confidential and not considered to be a public record pursuant to section 10 of chapter 66, unless: (i) the toxics user agrees in writing that such information may be made available to the department; or **(ii) the office determines at its discretion, the information pertains to an imminent threat to public health or safety, or to the environment;** or (iii) disclosure to the department is required by law.”

If an imminent threat is perceived in the field and if no opportunity exists to confirm or discuss the issue with superiors, the field engineer should take appropriate action erring on the side of caution. At first opportunity, the field engineer should consult with the Director or a designee in making the determination. Care should be taken to disclose only as much information as is necessary to address the imminent threat to public health or safety or to the environment.

Imminent threat: any condition or practice in an industrial facility where there is reasonable certainty that a danger exists which (a) could be expected to cause death or serious physical harm to employees, and/or (b) would pose a significant risk of harm to public welfare or the environment, immediately or before the imminence of such danger can be eliminated through normal enforcement procedures. "Serious physical harm" means that a part of the body is damaged so severely that it cannot be used or cannot be used very well. A health hazard would be considered an imminent danger if there is a reasonable expectation that toxic substances (e.g., dangerous fumes, dusts or gases) or other health hazards are present, and that exposure to them will cause immediate and irreversible harm to such a degree as to shorten life or cause reduction in physical or mental efficiency, even though the resulting harm is not immediately apparent. The "environment" includes the atmosphere, all surface and subsurface waters, all surface and subsurface soils, and plant and animal life.

THE DEFINITION IS BASED ON THE OSHA DEFINITION FOR "IMMINENT DANGER", FOUND IN SECTION 13(A) OF THE OSHA ACT. SECTION 13 IS ENTITLED PROCEDURES TO COUNTERACT IMMINENT DANGERS AND DEP'S DEFINITION OF "IMMINENT HAZARD" IN THE MA CONTINGENCY REGULATIONS. (310 CMR 40.0000)

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