



ADMINISTRATIVE RULES OF MONTANA



17.55.112 PROPER AND EXPEDITIOUS NOTICE

- (1) The department shall, as resources allow and considering the facility ranking, address facilities on the priority list required by ARM 17.55.108 in the manner provided in this rule. At a facility for which no administrative or judicial order under 75-10-711, MCA, has been issued, the department shall take the following actions:
 - (a) send a letter to a person liable or potentially liable under 75-10-715, MCA, explaining the required remedial actions and their bases and providing the opportunity to conduct the required remedial actions;
 - (b) ensure that a person liable or potentially liable under 75-10-715, MCA, is expeditiously performing remedial actions as required by 75-10-711, MCA, by requiring the person to propose a schedule for remedial actions and department reviews. When proposing the schedule, the person liable or potentially liable under 75-10-715, MCA, shall evaluate and explain the size and complexity of the facility, the scope of the remedial action, the availability and normal timeframes associated with construction of the required remedial action features, permitting timeframes, specialty contractor availability and scheduling requirements (if applicable), typical climatic conditions as they relate to the constructability of the remedial action and foreseeable delays in construction, and normal response time for requests to connect to utilities (as applicable). Based on that explanation, the department may approve, disapprove, or modify the schedule; and
 - (c) ensure that a person liable or potentially liable under 75-10-715, MCA, is properly performing the required remedial actions by reviewing work plans, reports, or other documents submitted by the person and identifying required revisions, as follows:
 - (i) the person liable or potentially liable under 75-10-715, MCA, must be given, at a minimum, one opportunity to address all of the department's required revisions on each submittal;
 - (ii) the person liable or potentially liable under 75-10-715, MCA, may request a meeting or conference call with the department to discuss the required revisions or alternatives to the required revisions. Such a request for a meeting or conference call must be made within seven business days of receiving the department's required revisions or the right to request such a meeting or conference call is waived;
 - (iii) if the department determines it is appropriate to modify its required revisions based on the meeting or conference call, the department shall document those modifications in writing;

- (iv) if the department determines that its required revisions and any modifications, if applicable, were not adequately addressed in the revised document, the department shall incorporate its required revisions electronically into the document and shall either finalize the document itself or shall provide the person liable or potentially liable under 75-10-715, MCA, an opportunity to finalize the document within the department's revisions. If the department finalizes the document, upon request of the person liable or potentially liable under 75-10-715, MCA, the department shall remove from the final version of the document the name of the author who prepared the original version of the document. In addition, if the department finalizes the document, the department shall include a statement on the cover page of the document such as: "The department finalized this document because all of its required changes were not incorporated. Although this document is designated a department version, the author of the original document holds a copyright on the original document, and may have intellectual property rights in all or a portion of this document. Further, information regarding the original document is available in the department files" or equivalent language;
 - (v) when incorporating required revisions into a document, the department shall ensure that documents required by Montana law to be endorsed by a licensed professional are modified and endorsed by a duly licensed professional; and
 - (vi) the person liable or potentially liable under 75-10-715, MCA, may indicate its disagreement with the department's required revisions in a letter to be included in the department files, and may insert the following sentences in a footnote on the cover page of the document: "The department has required changes to this document to which [the person liable or potentially liable under 75-10-715, MCA] does not agree. See the department files for more information." The person liable or potentially liable under 75-10-715, MCA, may not in any other manner indicate its disagreement with the department's required revisions in the document itself. This includes, but is not limited to, the use of highlighting, italicizing, footnoting, and underlining.
- (2) A person liable or potentially liable under 75-10-715, MCA, shall complete all remedial actions required by the department according to the department's approved schedule, unless an extension is requested and approved by the department. When considering a request for extension, the department shall consider the reason for such request including, but not limited to, consideration of force majeure events; shall document its decision regarding the requested extension in writing; and shall grant a reasonable request for an extension, unless the request for an extension would result in undue delay or pose an unacceptable risk to public health, safety, and welfare and the environment. If the department's review is delayed beyond what is provided for in the schedule, the department shall modify the schedule to account for that delay.
- (3) If a person liable or potentially liable under 75-10-715, MCA, does not comply with the approved schedule, does not incorporate the department's required revisions on work plans, reports, or other documents, or does not perform remedial actions as required by the department, the department may determine that the person is not properly and expeditiously performing the appropriate remedial actions and may:
 - (a) issue a unilateral order to the person liable or potentially liable under 75-10-711, MCA;
 - (b) file a civil action as provided in 75-10-711 or 75-10-715, MCA;

- (c) conduct the required remedial actions and seek cost recovery and penalties as provided in 75-10-711 or 75-10-715, MCA;
 - (d) file a cost recovery action as provided in 75-10-722, MCA; or
 - (e) pursue any other action allowed by law.
- (4) All submittals to the department from a person or potentially liable person under 75-10-715, MCA, including those from its consultant or contractor, must be in both hard copy as well as modifiable electronic format.
- (5) The provisions of this rule do not apply to facilities that are being addressed under the Voluntary Cleanup and Redevelopment Act.

Authorizing statute(s): 75-10-702, 75-10-704, MCA

Implementing statute(s): 75-10-702, 75-10-704, 75-10-706, 75-10-711, MCA

History: NEW, 2010 MAR p. 2346, Eff. 10/15/10.