



ADMINISTRATIVE RULES OF MONTANA



24.301.1009 DISPUTES REGARDING PENALTIES AND FINES – MEDIATION

- (1) A party that timely disputes a civil penalty may, after first satisfying the mediation requirements of this rule, request a contested case with the department. The contested case must be held in accordance with the Montana Administrative Procedure Act and conducted by the department's Office of Administrative Hearings.
- (2) The advisory council shall act as the mediator of disputed civil penalties and shall attempt to bring the parties to mutually acceptable resolution of the dispute.
- (3) Mediation is a private, mandatory, informal, and nonbinding proceeding. Statements made during the mediation process, and the recommendations of the mediator, are not admissible in any other proceeding, and may not be offered in evidence in any other proceeding.
- (4) The department shall promptly notify the advisory council of disputes arising under 69-4-524 or 69-4-525, MCA. The mediation must be conducted within 45 days of council notification.
- (5) Mediation may be conducted by a majority of the advisory council, or the council chair may delegate the duty to a subset of the council.
- (6) Mediation is conducted by telephone, unless the parties and the mediator agree to in-person mediation, and the parties waive the 45-day requirement.
- (7) The department shall issue a written report of the council's recommendation to the parties within 15 days of the mediation.
- (8) If the parties agree to a resolution of their dispute during mediation or within 20 days after the report is sent to the parties, the department shall notify the advisory council that the matter has been resolved.
- (9) If the party disputing the civil penalty does not agree to resolve the matter, the party must request a contested case with the department within 20 days of the issuance of the mediation report.
- (10) An underground facility owner that received a fine may contest the fine by requesting a contested case hearing with the department within 20 days of the fine being levied.
- (11) Failure of a party to timely request a contested case with the department acts as waiver of the right to a contested case.
- (12) Mediation conducted under this rule may be guided by, but is not bound by, the mediation procedures and rules applicable to workers' compensation matters, pursuant to Title 39, chapter 71, part 24, MCA, and ARM Title 24, chapter 28.

Authorizing statute(s): 69-4-522, MCA

Implementing statute(s): 69-4-522, 69-4-526, 69-4-529, MCA

History: NEW, 2018 MAR p. 1827, Eff. 9/8/18; AMD, 2020 MAR p. 1840, Eff. 10/10/20.