



ADMINISTRATIVE RULES OF MONTANA



17.55.108 FACILITY LISTING

- (1) The department may list a facility on the CECRA priority list if the department determines there is a confirmed release or substantial threat of a release of a hazardous or deleterious substance that may pose an imminent and substantial threat to public health, safety, or welfare or the environment.
- (2) Prior to listing a facility on the CECRA priority list, the department shall provide the opportunity for public comment, as follows:
 - (a) The department shall publish a notice of the proposed listing and a description of the nature and severity of the threat in a daily newspaper of general circulation in the county where the community most likely to be threatened by the facility that is proposed for listing is located.
 - (b) The notice must provide 30 days for submission of written comments to the department regarding the proposed listing.
 - (c) The department shall notify the county commissioners, local boards of health created pursuant to 50-2-104 through 50-2-107, MCA, and governing bodies of cities, towns, and consolidated local governments in the community most likely to be threatened by the facility that is proposed for listing.
 - (d) The department may conduct a public meeting in the community most likely to be threatened by the facility that is proposed for listing without a specific request for such meeting.
 - (e) The department shall conduct a public meeting in the community most likely to be threatened by the facility that is proposed for listing upon written request within the comment period by ten or more persons, by a group composed of ten or more members, or by a governing body of a city, town, or county.
 - (f) The department shall consider and respond in writing to relevant written comments properly submitted during the comment period or at the public meeting.
- (3) If the department lists a facility on the CECRA priority list and remedial actions to address the release or threatened release of hazardous or deleterious substances at the facility are required by another state program, the department shall provide a written rationale for listing the facility on the CECRA priority list. The department shall place this document in a facility file maintained by the department.
- (4) Any person may submit a request to the department to list a facility on the priority list. The request must be in writing and contain the rationale for the proposed listing and documentation

or confirmation of the release or threat of a release. If the department determines listing may be appropriate, compliance with the provisions of this rule is required.

- (5) When evaluating whether to list a facility under (1) and (6), the department shall consider the following factors relevant to the facility, if information on such factors is known to the department:
 - (a) pathways for human or ecological exposure that:
 - (i) are completed;
 - (ii) using science-based evaluation methods acceptable to the department based on site-specific conditions, have a potential to be completed; or
 - (iii) otherwise have a reasonable potential to be completed;
 - (b) the quantity, concentration, toxicity, or mobility of the hazardous or deleterious substance;
 - (c) the sensitivity of the receptor population;
 - (d) documented bioaccumulative characteristics of the hazardous or deleterious substances released;
 - (e) established background or naturally occurring concentrations of hazardous or deleterious substances;
 - (f) extent of known releases of hazardous or deleterious substances;
 - (g) physical characteristics of the facility;
 - (h) actual impacts to state water and impacts to state water that, using science-based evaluation methods acceptable to the department based on site-specific conditions, have a potential to occur; and
 - (i) other relevant factors that indicate actual or potential harm or lack of actual or potential harm to public health, safety, or welfare or the environment.
- (6) Despite the existence of a concentration of a hazardous or deleterious substance in the environment above screening levels adopted by the department in ARM 17.55.109, the department may make a written determination that the release does not pose an imminent and substantial threat to public health, safety, or welfare or the environment based on its evaluation of the factors in (5).

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

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

History: NEW, 1999 MAR p. 837, Eff. 4/23/99; AMD, 2010 MAR p. 2346, Eff. 10/15/10.