

ENVIRONMENTAL QUALITY

CHAPTER 55

CECRA REMEDIATION

Subchapter 1

Listing and Delisting Facilities for Remediation  
Under CECRA; Ranking Facilities on a Priority List

Rule	17.55.101	Purpose (REPEALED)
	17.55.102	Definitions
		Rules 17.55.103 and 17.55.104 reserved
	17.55.105	CECRA Priority List
		Rules 17.55.106 and 17.55.107 reserved
	17.55.108	Facility Listing
	17.55.109	Incorporation by Reference
	17.55.110	Third-Party Remedial Actions at Order Sites
	17.55.111	Facility Ranking
	17.55.112	Proper and Expeditious Notice
	17.55.113	Facility-Specific Cleanup Levels and Additional Remedial Actions
	17.55.114	Delisting a Facility on the CECRA Priority List
	17.55.115	Orphan Share Reimbursement

## Subchapter 1

Listing and Delisting Facilities  
for Remediation Under CECRA;  
Ranking Facilities on a Priority List

17.55.101 PURPOSE (REPEALED) (History: 75-10-702, 75-10-704, MCA; IMP, 75-10-702, 75-10-704, MCA; NEW, 1999 MAR p. 837, Eff. 4/23/99; REP, 2010 MAR p. 2346, Eff. 10/15/10.)

17.55.102 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions in 75-10-701, MCA:

- (1) "Beneficial use" means a use of water designated under the appropriate classification in ARM 17.30.621 through 17.30.629 and 17.30.1006.
- (2) "Final permanent remedy" means, for purposes of 75-10-722, MCA, the remedial actions identified by the department in a record of decision and constructed after the record of decision is issued.
- (3) "Free product" means a hazardous or deleterious substance or a material containing a hazardous or deleterious substance that is present as a non-aqueous phase liquid.
- (4) "May present an imminent and substantial endangerment" and "may pose an imminent and substantial threat" mean that:
  - (a) except as provided in (b), concentrations of hazardous or deleterious substances in the environment exist above screening levels adopted by the department in ARM 17.55.109 or other statutory or regulatory cleanup levels;
  - (b) a concentration of a hazardous or deleterious substance in the environment in a concentration that exceeds a screening level adopted by the department in ARM 17.55.109 does not present an imminent and substantial endangerment or pose an imminent and substantial threat if:
    - (i) the department has determined pursuant to ARM 17.55.108(5) and (6) that the release does not present an imminent and substantial endangerment or pose an imminent and substantial threat to public health, safety, or welfare or the environment unless, based on significant new or different information received after the initial determination, the department makes a different determination; or
    - (ii) department-approved facility-specific cleanup levels developed in accordance with ARM 17.55.113 for the parameters that exceed the screening levels are met.
- (5) "Primary contact activities" means activities that involve direct contact with water including, but not limited to, swimming, wading, or fishing.
- (6) "Record of decision" means the final agency decision document that identifies and explains the final remedial actions selected by the department that will be used to clean up a facility. It does not include a voluntary cleanup plan approved under 75-10-736, MCA.

(7) "Sensitive environment" means:

- (a) a terrestrial or aquatic resource, including wetlands, with unique or highly valued environmental or cultural features;
- (b) an area with unique or highly valued environmental or cultural features; or
- (c) a fragile natural setting. (History: 75-10-702, 75-10-704, MCA; IMP, 75-10-702, 75-10-704, 75-10-711, MCA; NEW, 1999 MAR p. 837, Eff. 4/23/99; AMD, 2006 MAR p. 528, Eff. 2/24/06; AMD, 2008 MAR p. 946, Eff. 5/9/08; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2010 MAR p. 1796, Eff. 8/13/10; AMD, 2010 MAR p. 2346, Eff. 10/15/10.)

Rules 17.55.103 and 17.55.104 reserved

17.55.105 CECRA PRIORITY LIST (1) The department shall maintain and update, on a semi-annual basis, the CECRA priority list. The CECRA priority list must include all facilities that are listed pursuant to ARM 17.55.108 and those facilities listed as of April 23, 1999. The CECRA priority list will identify each facility by name, town or city, and county, and will indicate the current rank of each facility.

(2) Inclusion on the CECRA priority list or the rank of a facility on that list is not a precondition to department action under CECRA or any other applicable law.

(3) Delisting a facility on the CECRA priority list pursuant to ARM 17.55.114 does not relieve a person liable or potentially liable under 75-10-715, MCA, from the responsibility to conduct remedial actions, including operation and maintenance, required by the department. (History: 75-10-702, 75-10-704, MCA; IMP, 75-10-702, 75-10-704, MCA; NEW, 1999 MAR p. 837, Eff. 4/23/99.)

Rules 17.55.106 and 17.55.107 reserved

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). (History: 75-10-702, 75-10-704, MCA; IMP, 75-10-702, 75-10-704, 75-10-711, MCA; NEW, 1999 MAR p. 837, Eff. 4/23/99; AMD, 2010 MAR p. 2346, Eff. 10/15/10.)

17.55.109 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (June 2019 edition);

(b) Drinking Water Maximum Contaminant Levels, published at 40 CFR 141.11, 40 CFR 141.61, 40 CFR 141.62, 40 CFR 141.63, 40 CFR 141.64, 40 CFR 141.65, and 40 CFR 141.66 (2010);

(c) Montana Risk-based Corrective Action Guidance for Petroleum Releases (May 2018);

(d) U.S. Environmental Protection Agency, Regional Screening Level (RSL) Tables (November 2018), except when:

(i) comparing contaminant concentrations to the regional screening levels, with the exception of lead, the department will adjust the non-carcinogenic levels by dividing by ten to account for cumulative potential health effects;

(ii) comparing contaminant concentrations to the protection of ground water soil screening levels, the department will adjust the dilution attenuation factor to ten to account for a state-specific attenuation factor;

(iii) comparing contaminant concentrations to the protection of ground water soil screening levels, the department will apply an appropriate adjustment based upon either the ratio of the department Circular DEQ-7 human health standard and the maximum contaminant level or the ratio of the department Circular DEQ-7 human health standard and the U.S. Environmental Protection Agency tapwater screening level found in (1)(d) to ensure that contaminants potentially leaching to ground water will not exceed Montana numeric water quality standards found in Department Circular DEQ-7;

(e) Montana Department of Environmental Quality, Remediation Division, Table 4-4, Background Concentrations of Inorganic Constituents in Montana Surface Soil (September 2013); and

(f) U.S. Environmental Protection Agency Region 3 Biological Technical Assistance Group Freshwater Sediment Screening Benchmarks (August 2006).

(2) All references in this subchapter to the documents incorporated by reference in this rule are to the edition specified in this rule.

(3) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, Remediation Division, P.O. Box 200901, Helena, MT 59620-0901.

(4) The references adopted in (1)(c) through (1)(f) are to be used as screening levels. When the department uses screening levels referenced in (1)(d) and (1)(e) rather than site-specific data to make a listing decision under ARM 17.55.108, it shall use the higher applicable screening level provided for in (1)(d) or (1)(e). The department's use of these screening levels for purposes of ARM 17.55.108(1) does not establish these levels as cleanup standards.

(5) An exceedance of a screening level alone is not sufficient for the department to initiate condemnation proceedings under 75-10-720, MCA. (History: 75-10-702, 75-10-704, MCA; IMP, 75-10-702, 75-10-704, 75-10-711, MCA; NEW, 2010 MAR p. 2346, Eff. 10/15/10; AMD, 2012 MAR p. 1147, Eff. 6/8/12; AMD, 2012 MAR p. 2060, Eff. 10/12/12; AMD, 2014 MAR p. 2003, Eff. 9/5/14; AMD, 2017 MAR p. 602, Eff. 5/13/17; AMD, 2019 MAR p. 174, Eff. 2/9/19; AMD, 2019 MAR p. 826, Eff. 6/22/19.)

17.55.110 THIRD-PARTY REMEDIAL ACTIONS AT ORDER SITES (1) At a facility for which an administrative or judicial order under 75-10-711, MCA, has been issued, a person not subject to that order may not conduct any remedial action at the facility that is subject to the order without the written permission of the department.

(2) When requesting permission, the person wishing to conduct the remedial action shall submit a work plan or other document request for such permission in writing to the department at least 30 calendar days in advance of the proposed start date for the remedial action. The document must include:

(a) a map or figure showing the location of the requested remedial action in relation to the facility boundary;

(b) a work plan that clearly states the objective of the remedial action;

(c) a description of the proposed remedial action;

(d) a description of whether investigation-derived waste including, but not limited to, drill cuttings, excavated soil, purge water, decontamination water, and personal protective equipment, will be generated and, if so, how the waste will be disposed;

(e) a description of any proposed laboratory analyses;

(f) if monitoring wells are proposed for installation, a statement that the wells will be constructed and later abandoned according to Montana regulations by a licensed well driller;

(g) a statement that an appropriate health and safety plan will be used for the work;

(h) provision of a summary report upon completion of the work to be submitted within a specified time after completion of the remedial action; and

(i) any other information required by the department.

(3) The department shall review the request and shall either provide permission or require revision to the document to ensure that:

(a) the proposed remedial action will not conflict with ongoing work at the facility;

(b) the proposed work, if conducted in the manner described in the document, will not spread, worsen, or otherwise exacerbate the contamination; and

(c) other relevant factors are considered by the department.

(4) The department's permission under this rule does not provide the right to access the property and the person wishing to conduct the remedial action is responsible for gaining permission to access any property necessary to conduct the work.

(5) The department's permission does not waive or otherwise alleviate the need to obtain permits that may be required to conduct the work.

(6) If the department provides written permission to conduct the work, the person conducting the work is responsible for ensuring that all work complies with applicable laws and regulations that may govern that work.

(7) If the department provides written permission to conduct the remedial action, the person conducting that action must notify the department of the date that the person is commencing the remedial action at least ten calendar days prior to the start of the remedial action and must provide the department with any further requested information including, but not limited to, a summary report upon completion of the work, laboratory data, log books, field notes, photographs, or other information. (History: 75-10-702, 75-10-704, MCA; IMP, 75-10-702, 75-10-704, 75-10-706, MCA; NEW, 2010 MAR p. 2346, Eff. 10/15/10.)

17.55.111 FACILITY RANKING (1) The department shall rank each listed facility that is determined by the department to require remedial action and the ranking decision will be made in writing.

(2) A maximum priority designation must be given to a facility that exhibits one or more of the following characteristics:

(a) documented release to surface water in a drinking water intake that is a public drinking water supply with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141; or

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(b) documented release to ground water in a drinking water well that is a public drinking water supply with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141; or

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(c) documented release into a drinking water line that is part of a public drinking water supply with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141; or

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(d) documented release to surface water in a drinking water intake that is a domestic or commercial drinking water supply with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141; or

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(e) documented release to ground water in a drinking water well that is a domestic or commercial drinking water supply with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141; or

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(f) documented release into a drinking water line that is a domestic or commercial drinking water supply with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141; or

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141, concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(g) presence of explosive vapor levels or concentrations of vapors that could cause acute health effects in a structure or utility corridor;

(h) indications of an imminent danger of fire or explosion or a release of dangerous levels of vapors in ambient air; or

(i) presence of free product in significant quantities in the ground water, in or on surface water bodies, in utilities other than water supply lines, or in surface water runoff.

(3) A high priority designation must be given to a facility whose release does not exhibit any of the characteristics provided in (2) but exhibits one or more of the following characteristics:

(a) documented release to surface water that is a drinking water source with:

(i) no documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 in a drinking water supply intake; and

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141, no concentration at levels that render the water harmful, detrimental, or injurious to a beneficial use in a drinking water supply intake;

(b) documented release to ground water that is a drinking water source with:

(i) no documented or probable exceedance of a Montana water quality human health standard listed in department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards," or a standard established as drinking water maximum contaminant level listed at 40 CFR 141 in a drinking water supply well; and

(ii) for substances whose parameters for human health are not listed in DEQ-7 or 40 CFR 141, no concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use in a drinking water supply well;

(c) documented release to ambient air that poses a threat to public health;

(d) documented release of a hazardous or deleterious substance on the ground surface that poses a threat to public health;

(e) migration of contamination to a utility corridor currently in use;

(f) threat of explosive vapor levels or concentrations of vapors that could cause health effects by accumulating in a structure or utility corridor;

(g) documented and extensive contamination of exposed shallow soil or exposed sediment with uncontrolled facility access;

(h) documented existence of a hazardous or deleterious substance in a container or impoundment that is leaking or that presents an imminent threat of leakage in an area with uncontrolled facility access;

(i) documented impact to a sensitive environment.

(4) A medium priority designation must be given to a facility that does not exhibit any of the characteristics provided for in (2) or (3) but exhibits one or more of the following characteristics:

- (a) documented or probable release to surface water that is not a drinking water source but is used for a beneficial use;
- (b) documented or probable release to ground water that is not a drinking water source but is used for a beneficial use;
- (c) documented or probable release into a water line that is not used as a drinking water source but is used for a beneficial use;
- (d) imminent threat from migration of contamination from soil to:
  - (i) surface water that is a drinking water source;
  - (ii) ground water that is a drinking water source; or
  - (iii) a water line that is a drinking water source;
- (e) potential release to air that may pose a threat to public health;
- (f) potential for migration of contamination to a utility corridor currently in use;
- (g) documented contamination to a utility corridor not in use;
- (h) documented or probable localized contamination of soil;
- (i) presence of containers or impoundments containing hazardous or deleterious substances that are leaking or that present an imminent threat of leakage in an area with controlled facility access;
- (j) documented or probable extensive contamination of soil with controlled facility access; or
- (k) potential impact to a sensitive environment.

(5) A low priority designation must be given to a facility that does not exhibit any of the characteristics provided for in (2), (3), or (4) but which does require remedial action. A low priority facility exhibits one or more of the following characteristics:

- (a) minimal potential for release to surface water that is not used for any purpose other than primary contact activities;
- (b) minimal potential for release to ground water that is not used for any purpose other than primary contact activities;
- (c) minimal potential for release into a water line that is not used for any purpose other than primary contact activities;
- (d) minimal potential for release to air that may pose a threat to public health;
- (e) minimal potential for release to a utility corridor; or
- (f) minimal documented release or potential for release to soil with minimal potential for direct contact hazard.

(6) An operation and maintenance designation must be given to a facility on the CECRA priority list at which remedial actions are complete but which is undergoing operation and maintenance, including but not limited to revegetation monitoring, surface water monitoring, ground water monitoring, or waste repository maintenance. Facilities with an operation and maintenance designation will be maintained on the CECRA priority list in a separate category.

(7) The department may reevaluate the rank of a facility if the department obtains or receives additional information that may cause a change in rank. Compliance with ARM 17.55.108 is not required to change the rank of the facility.

(8) Any person may submit a request to the department to evaluate a facility on the priority list for purposes of changing the rank of the facility. The request must be in writing and contain the rationale for the reclassification. The department may determine such a change in rank is appropriate. Compliance with ARM 17.55.108 is not required to change the rank of the facility. (History: 75-10-702, 75-10-704, MCA; IMP, 75-10-702, 75-10-704, 75-10-711, MCA; NEW, 1999 MAR p. 837, Eff. 4/23/99; AMD, 2006 MAR p. 528, Eff. 2/24/06; AMD, 2010 MAR p. 2346, Eff. 10/15/10.)

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. (History: 75-10-702, 75-10-704, MCA; IMP, 75-10-702, 75-10-704, 75-10-706, 75-10-711, MCA; NEW, 2010 MAR p. 2346, Eff. 10/15/10.)

17.55.113 FACILITY-SPECIFIC CLEANUP LEVELS AND ADDITIONAL REMEDIAL ACTIONS (1) For purposes of assuring protection of public health, safety, and welfare, the department shall allow the calculation of facility-specific cleanup levels using exposure assumptions and risk levels acceptable to the department.

(2) For purposes of assuring protection of the environment, the department shall allow the calculation of facility-specific cleanup levels. The department shall approve risk and leaching determinations on a facility-specific basis using science-based assumptions acceptable to the department.

(3) Except as may otherwise specifically be provided for in a settlement agreement or administrative order on consent entered into under 75-10-723, MCA, if the department selects or approves a remedial action and subsequently determines that the remedial action does not attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures protection of public health, safety, and welfare and of the environment, the department shall require further remedial action at the facility by a person liable or potentially liable under 75-10-715, MCA. The department shall set forth in writing the basis for requiring any further remedial action. (History: 75-10-702, 75-10-704, MCA; IMP, 75-10-702, 75-10-704, 75-10-711, MCA; NEW, 2010 MAR p. 2346, Eff. 10/15/10.)

17.55.114 DELISTING A FACILITY ON THE CECRA PRIORITY LIST

(1) Except as provided in (3), the department shall delist a facility from the CECRA priority list if:

(a) the department determines that all requirements of CECRA have been fully met, including the requirement that conditions at the facility assure present and long term protection of public health, safety and welfare, and the environment;

(b) the department determines that the facility should not have been listed based on subsequent investigation; or

(c) another state program assumes jurisdiction of the facility and that state program is addressing all the releases and threatened releases of all hazardous or deleterious substances at the facility.

(2) In determining whether to delist a facility from the CECRA priority list, the department shall consider whether:

(a) documented investigations or facility-specific risk analysis demonstrate that taking additional remedial actions is not appropriate to address the release or threatened release of hazardous or deleterious substances;

(b) liable persons or other persons have completed all appropriate remedial actions, including a final long term remedy, required by the department; and

(c) other relevant information or conditions exist that pertain to the issue of delisting the facility from the CECRA priority list.

(3) The department may not delete from the CECRA priority list a facility that is subject to continuing engineering controls or institutional controls unless the engineering or institutional controls consist of:

(a) deed restrictions or restrictive covenants that run with the land and that have been approved by the department and duly recorded;

(b) zoning restrictions; or

(c) a designated controlled ground water area as provided for in 85-2-506, MCA.

(4) The department may list on the CECRA priority list a facility that has previously been delisted from the CECRA priority list if a new release occurs or if the department receives new or different information regarding the need for further remedial action. In relisting, the department shall comply with the requirements of ARM 17.55.108.

(5) A facility at which remedial actions are being conducted under the Voluntary Cleanup and Redevelopment Act is eligible for delisting from the CECRA priority list after a petition for closure has been granted by the department pursuant to 75-10-738, MCA, and the other requirements of this rule are met.

(6) Prior to delisting a facility on the priority list, the department shall provide the opportunity for public comment, as follows:

(a) The department shall publish a notice of the proposed delisting 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 delisting is located.

(b) The notice must provide 30 days for submission of written comments to the department regarding the proposed delisting.

(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, or consolidated local governments in the community most likely to be threatened by the facility that is proposed for delisting.

(d) The department may conduct a public meeting in the community most likely to be threatened by the facility that is proposed for delisting 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 delisting upon written request within the comment period by ten or more persons, by a group composed of ten or more members, or by a local 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.

(7) Any person may submit a request to the department to delist a facility on the priority list. The request must be in writing, contain the rationale for the delisting, and indicate with specificity how the requirements of this rule have been met. If the department determines delisting is appropriate, compliance with (6) is required. (History: 75-10-702, MCA; IMP, 75-10-702, MCA; NEW, 1999 MAR p. 837, Eff. 4/23/99.)

17.55.115 ORPHAN SHARE REIMBURSEMENT (1) Upon completion and department approval of the final report evaluating the nature and extent of contamination at a facility with an approved stipulated agreement under 75-10-750, MCA, the lead liable person under 75-10-746, MCA, may submit a claim to the department for reimbursement of the orphan's share of the cost associated with the preparation of that report.

(2) Upon completion and department approval of the final report formulating and evaluating final remedial alternatives at a facility with an approved stipulated agreement under 75-10-750, MCA, the lead liable person under 75-10-746, MCA, may submit a claim to the department for reimbursement of the orphan's share of the cost associated with the preparation of that report.

(3) Upon completion of the department-approved remedial action plan at the facility and department approval of that completion, the lead liable person under 75-10-745, MCA, may submit a claim to the department for reimbursement of the orphan's share of the cost associated with completion of the department-approved remedial action plan.

(4) Reimbursement under (1), (2), and (3) is limited to those eligible costs, as provided for in 75-10-743(5), MCA, incurred by the lead liable person and is governed by the other provisions of 75-10-743, MCA.

(5) If the department determines the lead liable person is eligible for hardship reimbursement under 75-10-743(7), MCA, the department may reimburse the lead liable person for the orphan's share of ongoing remedial action costs but shall, at a minimum, retain the orphan's share of remedial action costs incurred prior to the date the hardship determination was made in order to ensure the completion of all required remedial actions. (History: 75-10-702, MCA; IMP, 75-10-702, 75-10-743, MCA; NEW, 2010 MAR p. 2346, Eff. 10/15/10.)

