

ENVIRONMENTAL QUALITY

CHAPTER 53

HAZARDOUS WASTE

Subchapter 2

Access to Information Regarding
Treatment, Storage, and Disposal Facilities

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Subchapter 2

Access to Information Regarding
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17.53.201 PURPOSE OF SUBCHAPTER (1) The purpose of this subchapter is to insure that information obtained by the department regarding facilities and sites used for the treatment, storage and disposal of hazardous wastes, as those terms are defined in 40 CFR 260.10, is available to the public. (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01.)

17.53.202 DEFINITIONS In this subchapter, the following definition applies:
(1) "Record" means any paper, writing, photograph, sound or magnetic recording, drawing, form, book, correspondence, microfilm, magnetic tape, computer storage media, map, or other document or other similar mechanism regardless of physical form or characteristics by which information has been preserved that has been made or acquired by the department or department employees in connection with the transaction of official business preserved for informational value or as evidence of a transaction and all other records of documents required by law to be filed with or kept by the department. (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01.)

Rules 17.53.203 through 17.53.205 reserved

17.53.206 RECORDS AVAILABLE AUTOMATICALLY (1) Any written request for the following types of records routinely distributed by the department shall be honored automatically:

- (a) finalized press releases;
- (b) copies of rules;
- (c) educational materials (including pamphlets); and
- (d) copies of speeches that have been delivered to the public. (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01.)

17.53.207 FORM OF REQUEST (1) A request for information pertaining to a facility under this subchapter must be made in writing, must reasonably describe the records sought in a way that will permit their identification, and should be addressed to the Hazardous Waste Section, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01; AMD, 2009 MAR p. 2371, Eff. 12/11/09.)

17.53.208 PRIVILEGED BUSINESS INFORMATION (1) Any hazardous waste management facility that deems information that it submits to the department as confidential in that it is unique to the facility and would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall, prior to submission of the information to the department, clearly label the information as confidential and/or obtain a protective order prohibiting disclosure to the public. Any information that is not confidential as set forth herein must be disclosed to the public upon request.

(2) Claims of confidentiality for the name and address of any permit applicant or permittee will be denied. (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01; AMD, 2002 MAR p. 789, Eff. 3/15/02; AMD, 2005 MAR p. 442, Eff. 4/1/05.)

Rules 17.53.209 through 17.53.211 reserved

17.53.212 DEPARTMENT DECISION TO ANSWER REQUEST (1) The department shall, within ten business days after a request for records pertaining to facilities, issue a written statement to the requestor stating which of the requested records, if any, will not be released and the reason for the denial of the request, including, if applicable, the need of the department to resolve a claim for confidentiality. Any other records not designated as non-releasable shall be provided to the requestor by the department.

(2) To the extent that records are required to be made available for public inspection, the department may inform the requestor that the records are available for inspection and where copies may be obtained.

(3) The period of ten business days (or any extension thereof) does not include any time that elapses between the date that a requestor is notified by the department that the request does not reasonably identify the records sought, and the date that the requestor furnishes a reasonable identification.

(4) The period of ten business days (or any extension thereof) does not include any time that elapses between the date that a requestor is notified by the department that payment of fees is required, and the date that the requestor pays (or makes arrangements to pay) such charges.

(5) The department may under unusual circumstances as outlined below extend the basic ten-day period established in (1) up to an additional ten business days. In such cases, the department shall furnish written notice to the requestor stating the reasons for the extension and the date by which the department expects to issue the determination. Unusual circumstances justifying an extension include:

(a) additional time is needed to search for and collect the requested records from separate facilities;

(b) additional time is needed to search for and collect the requested records because of the volume of the request; or

(c) additional time is needed for consultation with another agency having a substantial interest in the determination.

(6) Failure of the department to issue a determination within the ten-day period or any extension constitutes an agency decision that may be appealed to the board. (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01; AMD, 2005 MAR p. 442, Eff. 4/1/05.)

17.53.213 APPEAL (1) Each written notice by the department of its decision to deny a request for a record under this subchapter must state the reasons for the denial and the opportunity for the requestor to appeal the initial denial to the board by filing a written notice of appeal within 30 days after receipt of the determination.

(2) The decision of the board on appeal must be issued within 20 business days after the date of receipt of the appeal request.

(3) Failure of the board to issue a decision within the prescribed time period in (2) constitutes a final agency decision and is a basis for judicial review. (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2001 MAR p. 169, Eff. 1/26/01; AMD, 2005 MAR p. 442, Eff. 4/1/05.)

17.53.214 RECOVERY OF FEES AND COSTS OF ACTION (1) Nothing in this subchapter shall prevent a party that substantially prevails in an action filed in the district court for access to information from recovering its reasonable court costs and attorney fees as provided by law. (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2005 MAR p. 442, Eff. 4/1/05.)

17.53.215 FEES FOR SEARCHING AND COPYING (1) The fees for copying records will be determined by the department and published in the department's policies and procedures.

(2) This fee may be reduced or waived by the department if furnishing the information can be considered as primarily benefiting the general public. (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 2005 MAR p. 442, Eff. 4/1/05.)

