

HEALTH AND ENVIRONMENT REGULATIONS
CHAPTER 7: Lincoln County Notices of Violation & Abatement Order Review Process
Effective 12/11/2019

SUBCHAPTER 1: GENERAL PROVISIONS

7.1.101 INTENT: The purpose of this City-County Board of Health for Lincoln County Regulation is to establish a review process for notices of violation and abatement orders.

7.1.102 AUTHORITY: Authority for Regulations promulgated in this rule is provided for in MCA 50-2-111 through 50-2-124 to ensure public health and safety and to preserve and protect the quality of life and the environment in Lincoln County.

7.1.103 DEFINITIONS: The following definitions apply to this Regulation unless terms are otherwise defined under a specific Regulation:

- (1) Board: the City-County Board of Health for Lincoln County
- (2) Department: the Lincoln County Health Department
- (3) Facility: a business, residence, structure, system, area or location
- (4) Health Officer: the Lincoln County Health Officer or a designated representative
- (5) DEQ: the Montana Department of Environmental Quality
- (6) Person: any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity.

SUBCHAPTER 2: ISSUANCE OF ORDERS & PENALTIES

7.2.101 POWERS AND DUTIES OF THE DEPARTMENT

- (1) When the Department determines that a violation of the Board's Regulations has occurred or when an Abatement Order is issued pursuant to sections 50-2-116 or 50-2-118, MCA, the Department or Health Officer may issue written notice to the offender or an agent of the offender, either personally or by certified mail. Such notice shall specify the provision or provisions of the Regulations alleged to have been violated or authority for Abatement Order along with a short and plain statement of the facts that constitute the violation. The notice shall include an ORDER TO TAKE CORRECTIVE ACTION or ABATEMENT ORDER requiring compliance within a reasonable time as stated in the Order. The Order is final unless, within five business days after the Order is received, the offender submits a written request for a hearing before the Board, as provided for in 7.3.101(1). The Director of the Department may extend the timeframe for requesting a Board hearing at his/her sole discretion. A request for hearing does not stay the effectiveness of the Order on the date stated in the Order.
- (2) This Regulation does not prohibit the Department or Health Officer from issuing an Order that becomes effective immediately in response to a situation wherein immediate action is necessary to protect public health and safety. The offender still has review rights as stated in this Regulation, however, the Board, Department, or Health Officer may take necessary actions in the interim.
- (3) Action under this part shall not bar enforcement of the Regulations by injunction or other appropriate remedy.
- (4) This section does not prevent the Board or Department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

7.2.102 PENALTIES: Any person who violates any Regulation or Abatement Order shall be subject to penalties as stated in the given Regulation or as provided by sections 50-2-123 and 50-2-124, MCA. Those penalties include a misdemeanor, if convicted, and a fine of not less than \$10 or more than \$200 per offense or \$500 per offense pursuant to section 50-2-124, MCA. Each day of violation constitutes a separate offense. Additionally, the Board, Health Officer, or Department may seek expenses incurred to effect compliance pursuant to section 50-2-123, MCA.

SUBCHAPTER 3: REVIEW PROCESS

7.3.101 **BOARD HEARINGS**

- (1) Persons subject to a Department Notice of Violation and Order to Take Corrective Action or an Abatement Order issued pursuant to sections 50-2-116 or 50-2-118, MCA, may submit a written request for a hearing before the Board within five business days of receipt of the Notice and/or Order. The Director of the Department may extend the timeframe for requesting a Board Hearing at his/her sole discretion.
- (2) The Board shall schedule a hearing within 45 straight days of this request.
- (3) Notice of hearing shall be given by the Department to persons requesting a hearing at the address stated on the request for hearing or at the last known address, by personal service or by mail, not less than five business days before the hearing is scheduled. Notice is complete on the date of delivery or mailing.
- (4) The Department shall publish a notice of the hearing in the same manner as the Board agenda is publicly posted.
- (5) At the hearing, the Board shall first hear the staff report, if any, on the Notice of Violation and Order to Take Corrective Action or Abatement Order. Second, the person who requested the hearing may present relevant information to the Board. Third, the Board may hear any person who has relevant information regarding the Notice of Violation and Order to Take Corrective Action or Abatement Order. The hearing may be conducted informally and need not follow rules of evidence or procedure applicable to judicial hearings. The Board chair may impose rules for the orderly conduct of the hearing.
- (6) The Board shall affirm, modify, or revoke the Notice of Violation and Order to Take Corrective Action or Abatement Order, in writing, following completion of its review. A copy of this decision shall be sent by certified mail or delivered personally to the person who requested the hearing. The Board shall maintain a written record of the hearings and document its final decision in the record.

7.3.102 JUDICIAL REVIEW: Except as otherwise provided, persons subject to a hearing decision of the Board may appeal the decision to the district court pursuant to the contested case provisions of the Montana Administrative Procedure Act after the Department's appeal process is exhausted. If a Board Hearing is requested pursuant to this Regulation, then once the Board issues its written decision, the Board, Department, and/or Health Officer may proceed with any judicial remedy. If no Board Hearing is requested pursuant to this Regulation, then the Board, Department, and/or Health Officer may proceed with any judicial remedy.

SUBCHAPTER 4: SEVERABILITY AND CONFLICT OF ORDINANCE

7.4.101 CONFLICT: In any case where a provision of this Regulation is found to be in conflict with a provision of any other Regulation of Lincoln County, the provision which establishes the higher standard for the protection of public health and safety shall prevail.

7.4.102 SEVERABILITY: If any provision of this Regulation is declared invalid by any court or tribunal, the remaining provisions of this Regulation shall not be affected thereby.



Board Chair
City-County Board of Health for Lincoln County

12-16-19

Date