City of Missoula

Public Safety, Health and Operations Committee Agenda

Date: May 11, 2022, 8:00 AM - 9:10 AM

Location: ZOOM Webinar

Members: Stacie Anderson (chair), Daniel Carlino, John P. Contos, Mirtha Becerra, Jordan Hess, Gwen Jones, Kristen Jordan, Mike Nugent, Jennifer Savage, Amber Sherrill, Sandra Vasecka, Heidi West

Attend by computer:
Join the meeting
Attend by phone:
Cell phone users: 1-253-215-8782, 1-213-338-8477, or 1-267-831-0333
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Webinar ID: 880 6449 2180
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For more ways to watch the meeting and submit public comment, see the Citizen Participation Guide.
Issues? Call the City Clerk 406-552-6078.
If anyone attending this meeting needs special assistance, please provide 48 hours advance notice by calling the City Clerk Office at 406-552-6073.

Pages

1. ADMINISTRATIVE BUSINESS

   1.1. Roll Call

   1.2. Approval of the Minutes for April 13, 2022 — 1

2. PUBLIC COMMENT

3. COMMITTEE BUSINESS

   3.1. Purchase of one (1) Single Axle Grapple Truck — Scot Colwell — 3

   Recommended motion:
   Approve the purchase of a Freightliner M2106 with a Fassi F145az grapple from Custom Truck & Equipment of Kansas City, Missouri for the Parks and Recreation Department for $147,675.00 which includes delivery to Missoula.

3.2. **Amendments to the Missoula Valley Water Quality District Ordinance** — Amber Sherrill — 5

Recommended motion:
[First reading and preliminary adoption] Set a public hearing on June 6, 2022, and preliminarily adopt an ordinance generally amending Missoula Municipal Code Chapter 13.26 entitled “Missoula Valley Water Quality ordinance” to amend and update regulations necessary to protect Missoula’s sole source aquifer.

3.3. **Resolution to support changes to the Missoula City-County Air Pollution Control Program rules** — Amber Sherrill — 88

Recommended motion:
Set a public hearing on June 6, 2022, on a resolution to support revisions to the Missoula City-County Air Pollution Control Program

4. ADJOURNMENT

Missoula City Council Public Safety, Health and Operations Committee Minutes

April 13, 2022
2:05 PM
ZOOM Webinar

Members present: **Stacie Anderson, Mirtha Becerra, Daniel Carlino, John P. Contos, Mike Nugent, Jennifer Savage, Amber Sherrill, Sandra Vasecka, Heidi West**

Members absent: **Jordan Hess, Gwen Jones, Kristen Jordan**

1. ADMINISTRATIVE BUSINESS

1.2 Approval of the Minutes

1.2.1 Minutes of the April 6, 2022 PSO meeting

Minutes approved as submitted.

3. COMMITTEE BUSINESS

3.1 Appointment to the Food Policy Advisory Board

2:10 - 2:25 Grant Melton Interview

2:30 - 2:45 Rebecca Elderkin Interview

2:50 - 3:05 Katie Karas Interview

Grant Melton gave some background on himself and why he would like to sit on the Food Police Advisory Board. He has 10 years in food media and as a political organizer. He worked for the Biden/Harris Campaign. Would like to see the Board focus on equitable and affordable foods, more accessible food and also, teach people how to cook. Sees food as a way of solving problems.

Rebecca Elderkin graduated with a degree in public health. She now works at All Nations Health Center and has a focus in food accessibility and climate change.

Katie Karas expressed her interested in the position. Her focus of interest is in food justice, access to food and growing and cooking food. She is a part-time therapist and works with the Department of Social Work faculty at the University.

Heidi West made a motion to nominate Rebecca Elderkin and John Contos made a motion to nominate Katie Karas.

Moved by: Heidi West

appoint Rebecca Elderkin to serve as an alternate member on the Food Policy Advisory Board for a term beginning immediately and ending on December 31, 2024.

AYES: (6): Mirtha Becerra, Daniel Carlino, Mike Nugent, Amber Sherrill, Sandra Vasecka, and Heidi West

NAYS: (3): Stacie Anderson, John P. Contos, and Jennifer Savage

Vote results: Approved (6 to 3)

4. ADJOURNMENT

3:18 p.m.

City of Missoula, Montana
City Council Committee Agenda item

Committee: **Public Safety, Health and Operations**

Item: Purchase of one (1) Single Axle Grapple Truck

Date: April 27, 2022

Sponsor(s): **Scot Colwell**

Prepared by: **Scot Colwell**

Ward(s) Affected:

☐ Ward 1	☐ Ward 4
☐ Ward 2	☐ Ward 5
☐ Ward 3	☐ Ward 6
☒ All Wards	☒ N/A

Action Required:
Approve purchase and release the bid bond.

Recommended Motion(s):
I move the City Council: Approve the purchase of a Freightliner M2106 with a Fassi F145az grapple from Custom Truck & Equipment of Kansas City, Missouri for the Parks and Recreation Department for $147,675.00 which includes delivery to Missoula.

Timeline:

Committee discussion:	May 11, 2022
Council action (or sets hearing):	n/a
Public Hearing:	n/a
Deadline:	n/a

Background and Alternatives Explored:
We sent this unit out for nationwide bids and received multiple responses from different vendors, but Custom Truck & Equipment was the only bidder. This is a used vehicle and is available within 20 days of purchase.

Financial Implications:
This purchase has been approved in the CIP and is part of the vehicle growth and replacement program. This is a new request that was approved in the FY22 budget this purchase comes in $2,325.00 under budget.

Equipment Budget:	$150,000.00
Actual Cost:	$147,675.00
Additional purchase info:	N/A

BID TABULATION

From: **Scot Colwell**
To: **City Council, Public Works Committee**
Subject: **Bid Tabulation for Single Axle Grapple Truck Purchase**

REQUEST FOR PURCHASE DETAIL	EQUIPMENT DESCRIPTION	EQUIPMENT DESCRIPTION	EQUIPMENT DESCRIPTION	EQUIPMENT DESCRIPTION
EQUIP. CLASSIFICATION	Single Axle Grapple Truck			
MAKE	Frieghtliner M2106			
MODEL	M2106			
BOX MODEL AND INSTALLER	Fassi F145az Custom Truck & Equipment			
YEAR \ AGE	2019			
DELIVERY DATE FROM DATE OF P.O.	20 Days			
FUEL TYPE	Diesel			
MILEAGE OR HOURS	5021 miles 588 hours			
VENDOR	Custom Truck and equipment			
VENDOR LOCATION	Kansas City MO			
***SIGNIFICANT BID EXCEPTIONS**				
BID BOND	Yes, Check #1012100 $14,768.00			
TRADE IN	None			
TOTAL NUMBER OF UNITS PURCHASED	1			
PRICE PER UNIT	$144,500			
TOTAL PURCHASE PRICE	$144,500			
DELIVERY SETUP COSTS	$3,175			
OTHER ACQUISITION COSTS	$0			
TOTAL ACQUISITION COST	**$147,675**			
LESS TRADE IN CREDIT	0			
TOTAL PURCHASE COST	**$147,675.00**			
Bid variance from low bid		N/A	N/A	N/A

City of Missoula, Montana
City Council Committee Agenda item

Committee:	**Public Safety, Health and Operations**
Item:	**Amendments to the Missoula Valley Water Quality District Ordinance**
Date:	May 4, 2022
Sponsor(s):	**Amber Sherrill**
Prepared by:	Todd Seib, R.S., PhD, Water Quality Specialist

Ward(s) Affected:

☐ Ward 1	☐ Ward 4
☐ Ward 2	☐ Ward 5
☐ Ward 3	☐ Ward 6
☒ All Wards	☐ N/A

Action Required:
Consider revisions to the Missoula Valley Water Quality Ordinance, Missoula Municipal Code, Chapter 13.26

Timeline and Recommended Motions:

Committee discussion:	5/11/2022
Council sets public hearing:	5/16/2022
Recommended motion:	[First reading and preliminary adoption] Set a public hearing on June 6, 2022, and preliminarily adopt an ordinance generally amending Missoula Municipal Code Chapter 13.26 entitled "Missoula Valley Water Quality ordinance" to amend and update regulations necessary to protect Missoula's sole source aquifer.
Public Hearing:	6/6/2022
Final Consideration	6/13/2022
Recommended motion:	[Second and final reading] Adopt an ordinance generally amending Missoula Municipal Code Chapter 13.26 entitled "Missoula Valley Water Quality ordinance" to amend and update regulations necessary to protect Missoula's sole source aquifer.
Deadline:	N/a

Background and Alternatives Explored:
In 1993 the Missoula Valley Water Quality District (District) was formed pursuant to 7-13-4504 MCA. Since its inception, the mission of the District has been to protect and improve the quality of our surface waters and the Missoula Valley aquifer, our community's sole source of drinking water. The Missoula Valley Water Quality Ordinance, Chapter 13.26 was enacted in 1994.

A lot has changed since the ordinance was enacted. In that time, the District has observed ongoing and new activities that may adversely impact our aquifer. At the same time, industry standards have changed, and new strategies have emerged that help prevent water contamination. Instead of waiting until a complaint is received and pollution has occurred to communicate these strategies and best management practices, we need to expand the code so it continues to be a functional tool for pollution prevention.

This revision addresses the correction of typos, reorganized/moved sections for readability, clarifies and updates references, permit language, and definitions, and better aligns the code with other municipal code enforcement processes. Proposed changes also incorporate existing polices and incorporate current industry standard protections. Specifically, we propose requiring and incorporating best management practices for industries and activities not addressed in the current code (e.g. auto-maintenance, carpet cleaning, chlorinated water discharging, food-grease disposal, fueling facility drainage, design and maintenance of aboveground storage tanks, pressure washing, road maintenance, vehicle washing, and well drilling) so we can continue to protect our water resources.

After many discussions within the District, consultants, and Pollution Prevention permitees, we developed a draft revision that was submitted to the Water Quality Advisory Council, the City of Missoula (Stormwater, Public Works, Parks, and Wastewater divisions), the City Attorney's office, the County Attorney's Office, and Missoula County Risk & Benefits, all of whom had suggestions for improving the draft that have been incorporated into the current text. Since many of the edits involved relocation, additions, and rewording by different parties, the tracked changes version is challenging to read. For this reason we also included an "simplified" version of this document. In both documents, comments in green were inserted to help understand the context of the applicable edits (green text will not be part of the final code).

On April 21st, 2022 the Water Quality District Board adopted a resolution requesting that the city council make recommended changes to the Missoula Valley Water Quality Ordinance and, contingent on the revised ordinance authorizing the mayor to adopt administrative rules, recommending the mayor adopt the Best Management Practices manual.

Because this is a City Code, the Missoula City Council is responsible for considering the recommended changes, holding a public hearing, and making a final decision.

Financial Implications:
N/A

Links to external websites:
http://missoula.co/wqordinance

Best Management Practices for Pollution Prevention

MISSOULA VALLEY
water quality district

Satisfies Missoula Valley Water Quality Ordinance Title 13.26

Approved Month, day, 2020

TABLE OF CONTENTS

Part 1: Introduction

1.1. Background and Significance

The Missoula Valley aquifer is the only source of drinking water for all of Missoula's residents. We all need and value clean water so we must protect our aquifer from contamination. This manual was developed under the authority of the Missoula Municipal Code, (Chapter 13.26.011) to assist businesses and facilities within the Aquifer Protection Area with operations that have the potential to contaminate groundwater and surface water. The methods described in this manual are commonly accepted as the best management practices (BMPs) that are protective of these water resources. BMPs can be processes performed by staff or structures designed to prevent the release of regulated substances into the environment. Examples of processes include sweeping a parking lot before pressure washing to reduce sediment load in the wash water or altering drilling air pressure to reduce water volume when developing a well. Secondary containment enclosures around waste oil tanks and oil-water separators that allow hydrocarbons to collect prior to discharge to a bioswale, are examples of structures.

1.2 How to use this manual

Minimally required BMPs that apply to certain activities, businesses, and components can be found in this manual. The Missoula Water Quality Code (Code) prohibits activities that may allow pollutants to contaminate our local water resources. Oftentimes, a lack of BMPs at auto shops, gas stations, etc. results in chemical releases into the environment and storm water systems. Storm water systems can collect and deliver pollutants to the nearest stream, wetland, or groundwater. Accordingly, sections 13.26.034(A) and (B) of the Code require the implementation of minimum BMPs by those who handle regulated substances or participate in activities that can lead to storm water runoff and water contamination. The minimally required BMPs in this manual should be used in consultation with other federal, state, and local authorities to ensure compliance with applicable rules or codes (Fire, Building, OSHA, etc). For example, federal right-to-know laws may require that facilities handling regulated substances report to the Local Emergency Planning Committee (LEPC) every year.

While this manual does not cover every potential scenario for pollution prevention, it does address the most common situations we encounter. With time and new application scenarios, occasionally a BMP may be found to be impracticable in the field, or a new BMP may be found to provide better protection for the resource. Alternative BMPs may be proposed and approved (see Appendix page 40). This manual will be updated as needed. Contact the Missoula Valley Water Quality District to determine the most current BMP options for your activity or to suggest changes to this document. Terminology defined in the Code and used in this manual are included in the appendix for reference.

When rainwater enters the streets and alleys of Missoula, it can flow to nearby storm drains that discharge contaminated water directly to our local streams.

Part 2: Best Management Practices (BMPs)

2.1 BMPs by Business Type or Activity

2.1.1 Auto Maintenance

These BMPs apply to auto service shops, fleet vehicle maintenance, and trucking/construction vehicle maintenance shops.

Discussion of Risk: These businesses store oils, solvents, and engine coolants. When drums, buckets, and pans are left outside with open tops or without tight seals, storm water can displace the fluids inside. Vehicle fluids can be released to the ground during the maintenance process or through leaks. Manual transfer of chemicals can lead to spills and overfills. Waste fluids that are stored and not shipped with a qualified hauler in a timely fashion increase the risk of release to the environment. Parts washer sludge contains toxic heavy metals. Floor drains can lead to subsurface disposal wells or old septic systems.

Uncontained and leaking waste oil at a truck maintenance facility being displaced by storm water to a nearby storm sewer.

Minimum BMPs:

1. Containment:

- Label and provide secondary containment for all drums and tanks containing regulated substances at or above threshold quantities (see pages 24-28 for component requirements).
- Periodically inspect containment for storm water accumulation and leaks. Repair broken or cracked containment structures.

2. Standard Operating Procedures:

- Inspect all incoming vehicles, parts, and equipment that are stored temporarily outside for leaks.
- Store vehicles needing repair in areas where leaking fluids will not reach the ground surface or storm water conveyances. If stored outdoors, use drip pans or other catchment devices.
- If temporary work is being conducted outside, use a tarp, ground cloth, or drip pans beneath the vehicle or equipment to capture all spills and drips. The collected drips and spills must be disposed of, reused, or recycled properly.
- Use drip pans or containers under parts or vehicles that drip or that are likely to drip liquids, such as during dismantling of liquid-containing parts or removal or transfer of liquids.
- Wipe up/absorb small spills and dispose of absorbent materials appropriately.
- Empty oil and fuel filters before disposal. Drain engine blocks and gear/transmission cases thoroughly and store inside or in covered/contained outside areas. Collect all used fluids including hydraulic oils and coolants generated from repair and maintenance processes and recycle or dispose of properly.
- Empty used-oil drain pans routinely to a contained bulk storage via a process that doesn't drip or spill outside of containment.
- Store drums and buckets of waste fluid inside the shop or other area protected from precipitation.
- Keep absorbent materials in sufficient quantity to address potential spills and in an easily accessible location.

3. Wastewater/Storm water:

- Floor drains that discharge to the ground are considered to be industrial or commercial injection wells and are not permitted. Contact the local Wastewater Treatment Plant (Missoula or Lolo) for pre-treatment requirements (e.g. oil-water separator) and approval for floor drain discharge to the public sanitary sewer system.
- Provide for proper disposal of waste oil and fuel. Never pour waste into a storm drain.
- For wastewater generated from vehicle washing see Vehicle Washing section (pg. 21).

Optional BMPs:

- Secondarily contain small volumes of auto fluids to prevent spills.
- Store cracked batteries in a covered, nonleaking secondary containment system.
- Perform and record routine maintenance checks on containers of regulated materials and waste fluids not placed in containment.

2.1.2 CARPET CLEANING

These BMPs apply to carpet cleaning and flood restoration businesses.

Discussion of Risk: Cleaning water may contain contaminants such as detergents, solvents, oils, sediment, and bacteria. This wastewater is typically collected in tanks during the cleaning process and is sometimes inappropriately discharged onto the ground or into storm sewers or dry wells. Missoula's storm drain system either discharges below ground (which drains to our drinking water supply) or it discharges to streams or rivers. Residential septic systems are not designed to receive regular discharges of carpet cleaning water. Disposal through septic systems may cause the septic system to fail prematurely.

Minimum BMPs:

Carpet cleaner illegally discharging wastewater to a swale. Photo credit: Panhandle Health District.

1. Wastewater:

- Dispose of water where the cleaning is being done. If the business or residence is connected to the municipal sewer system (check with building owner or call the Health Department to confirm), it is appropriate to dump down a mop sink or utility sink.
- Take to a car wash. Coordinate with the car wash owner/operator beforehand.
- The City of Missoula has a receiving station where tanks can be emptied. Contact the City of Missoula Wastewater Treatment Plant to make arrangements. If you live in or are doing work in Lolo, contact the Lolo Wastewater Treatment plant to arrange disposal.
- Do not put wash water into a drain connected to a septic system and never dump into a storm drain or apply onto the ground (including lawn, gravel or asphalt).

Optional BMPs:

- Secondarily contain cleaning solutions in the shop.
- Label equipment with a message similar to "No wastewater can be discharged to a storm drain, ditch, waterway, or ground surface".
- Recycle wash water. There are numerous products on the market that recycle wash water.

2.1.3 Chlorinated Water Handling, Hydrant and Water Line Flushing

These BMPs apply to persons that discharge chlorinated and dechlorinated water from swimming pools, spas, and other sources. Surface water discharges (through conveyances, irrigation ditches, or directly) may also require coverage under a Montana Pollutant Discharge Elimination System (MPDES) permit from DEQ.

Discussion of Risk:

Chlorine acts as a disinfectant primarily through the oxidizing action of hypochlorous acid. However, because of it's reactivity, chlorine is also very toxic to fish and aquatic life. Sediment transfer to storm systems and surface water can also be a risk whenever water is released at high pressure or volume to the ground.

Minimum BMPs

1. Water discharge:

- Planned discharges to conveyances connected to surface waters must be dechlorinated to below 0.01 ppm. Per the Montana DEQ-issued General Permit for De-chlorination Water and Hydrostatic Testing, the daily effluent limit for Total Residual Chlorine (TRC) is 0.011 mg/L and the limit of detection for TRC is 0.1 mg/L. Accordingly, analytical results showing concentrations less than or equal to 0.1 mg/L TRC are considered to be in compliance with this policy.
- Chlorinated water discharges to dry wells or the ground surface are acceptable without de-chlorination if not in direct contact with groundwater.
- Use appropriate sediment trapping techniques for chlorinated or dechlorinated discharges. Discharge to swales, use end-of-pipe energy dissipators, employ lower discharge rates, or use other applicable BMPs to prevent water discharge from transporting sediment into storm water conveyances or surface waters.

2.1.4 DRY-CLEANING

These BMPs apply to businesses that use perchloroethylene or other chlorinated solvents for laundry and dry-cleaning services.

Discussion of Risk: Chlorinated cleaning solvents are extremely toxic and mobile in the environment. Without strict containment, recovery, and waste disposal practices there is high risk for contamination of groundwater and surface water resources. There is a trend to replace the more hazardous chemicals, such as perchloroethylene, with safer aliphatic hydrocarbons and other alternatives.

Minimum BMPs:

1. Containment:

- Dry cleaning machines should be fully contained, typically over a steel drip pan that extends beyond the footprint of the entire machine. The pan should meet the full 110% capacity requirement.

2. Standard Operating Procedures:

- When obtaining new or replacement machines, obtain dry-to-dry machines equipped with integral Refrigerated Condensers or an equivalent.
- Lint and other wastes contaminated with dry cleaning solvent should be stored in covered, contained drums or buckets for pick-up by a hazardous waste hauler.

3. Wastewater:

- Treat wastewater from dry-cleaning machines and vacuum presses on-site using carbon absorption/evaporation technology or an equivalent technology, or properly dispose of the wastewater as a hazardous waste;
- Dispose of sludge as hazardous waste. All dry-cleaning operations must be connected to public sewer.

The use and improper disposal of perchloroethylene-containing degreasers from dry-cleaning and auto-body shops led to the discovery of drinking water contamination in Missoula in early 1990s.

2.1.5 Fueling and Petroleum Storage Facilities

These BMPs apply to any business engaged in the storage and/or dispensing of fuel for vehicles and machinery. These sites include those that are open to the public, private, temporary, or bulk storage facilities. The quantities of fuel stored at these facilities requires a Pollution Prevention Permit from the Missoula Valley Water Quality District. Provisions of the permit require identifying and addressing risks posed by fuel storage and dispensing, plans developed to prevent and respond to fuel releases, and management of storm water.

Discussion of Risk: Fuel storage and transfer over the Missoula Valley Aquifer presents significant risk to the environment. Some toxic components of fuel are highly mobile in the environment. 'Drive-offs' with hoses still inserted into tanks happen, especially at public fueling sites. Large releases can also occur during transfer of fuel from a fuel tanker to an underground storage tank (UST). Storm water dry wells located nearby can deliver spilled fuel to the groundwater which is the sole source of Missoula's drinking water. Some storm drains are piped to outfalls in nearby surface waters (Rattlesnake Creek, Clark Fork River, etc.) and a spill can directly impact that water body.

Dry well located directly downgradient from tank fueling area. Another storm drain along the road curb is also downgradient and leads to an outfall on Rattlesnake Cr.

Minimum BMPs for Public Fueling Stations:

1. Containment:

- These sites are required to use underground storage tanks (USTs) and comply with all Montana Department of Environmental Quality (DEQ) UST requirements.

2. Vehicle Fueling Area:

- Design storm water collection such that storm water does not discharge directly to storm drains (dry wells or inlets piped to outfalls) from the vehicle fueling area.
- Provide fueling island(s) with a fueling pad (pg. 30). Drainage on the fueling pad must be directed to a containment vault or through an oil-water separator and into a properly maintained vegetated swale or retention pond. Design must prevent storm water run-on and run-off.
- Design storm water collection system to allow containment vaults and oil-water separators to operate at full capacity during storm events (e.g. canopies, tank sizing, etc.).
- Install breakaway hoses and nozzles on fuel dispensers.
- Incorporate automatic pump shut-off thresholds to prevent fuel releases during drive-offs.

3. Tank Fueling Area:

- Design storm water collection so that storm water does not discharge directly to storm drains (dry wells or inlets piped to outfalls) from the tank fueling area.
- Drainage may be directed to a properly sized vegetated swale.
- When vegetated swales are not available, one option is to divert storm water to a properly sized oil-water separator or catch chamber that is connected to a dry well. In this case, there must be at least 20 feet of separation from bottom of dry well to groundwater. See tank fueling area (pg. 33) and oil-water separators (pg. 31) for more design conditions.

4. Standard Operating Procedures/Maintenance:

- Keep sufficient absorbent materials (e.g. Oil-Dri, absorbent pads, absorbent booms, etc.) on-site and in a location convenient for staff access.
- Absorb small spills and overfills with absorbent (Oil-Dri, kitty-litter, etc.) by working the granules into the spill and then sweeping them up immediately and disposing of properly.
- Train staff and maintain protocols for responding to small and large spills.
- Provide an employee trained on how to respond to a release on site at all times during facility operation, unless an automatic pump shutoff is programmed so that no more than 50 gallons of gasoline or 250 gallons of diesel fuel are automatically dispensed.
- Self-inspect and maintain the oil-water separator in tank fueling area (if equipped). Evacuate fuel releases immediately to maintain spill capacity of the separator or chamber.
- Self-inspect fueling pad to check for containment of storm water brought onto the pad with vehicles or by wind. Also check for blockages to gutters and cove drains to allow unobstructed flow through the system. Periodically test for water tightness of all components, pipe perforations, and piping joints.

5. Wastewater/Storm water:

- Follow all applicable drainage BMPs for oil-water separators, tank fueling areas, containment vaults, etc. Sites with a canopy and containment vault in the fueling pad must keep the vault evacuated and contents disposed of properly as described on page 25.

Training, leak detection, record keeping, and other BMP's associated with underground storage tanks are part of the UST program administered by DEQ and are beyond the scope of this manual.

Minimum BMPs for Private/Fleet Fueling:

These sites typically represent smaller versions of a public fueling station for trucking companies or fleet vehicles. Some facilities in this category use aboveground storage tanks (ASTs) for fuel storage.

Private fueling site with triple-walled tank, catch basin, and separator (left background). Photo credit: Panhandle Health District

1. Containment:

- Above ground storage tanks must meet minimum BMPs described in secondary containment (pg. 24) and AST sections (pg. 12).
- Sites with underground storage tanks are required to comply with all DEQ UST requirements.

2. Fueling Area

- Design storm water collection such that storm water does not discharge directly to storm drains from the vehicle fueling area, AST filling area, or tank fueling area (if applicable).
- Provide fueling island(s) with a fueling pad (pg. 30). Drainage on the fueling pad must be directed to a sealed vault or through an oil-water separator and into a properly maintained vegetated swale or retention pond. Design must prevent storm water run-on and run-off.
- Design storm water collection system to allow vaults and oil-water separators to operate at full capacity during storm events (e.g. canopies, tank sizing, etc.).
- Install breakaway hoses and nozzles on fuel dispensers.
- Incorporate automatic pump shut-off thresholds to prevent fuel releases during drive-offs.

3. Standard Operating Procedures/Maintenance:

- Keep sufficient absorbent materials (e.g. Oil-Dri, absorbent pads, absorbent booms, etc.) on-site and in a location convenient for staff access.
- Absorb small spills and overfills with absorbent (Oil-Dri, kitty-litter, etc.) by working the granules into the spill and then sweeping them up immediately and disposing of properly.
- Train staff and maintain protocols for responding to small and large spills
- If equipped with a fueling pad, self-inspect the pad to check for containment of storm water brought onto the pad with vehicles or by wind. Also check for blockages to gutters and cove drains to allow unobstructed flow through the system. Periodically test for water tightness of all components, pipe perforations, and piping joints.
- If equipped with ASTs, periodically self-inspect AST integrity (e.g. record gauge readings or dip the interstitial space in an above ground double-walled tank).

4. Wastewater/Storm water:

- Follow all applicable drainage BMPs for oil-water separators, tank fueling areas, containment vaults, etc. Sites with a canopy and containment vault in the fueling pad or secondary containment must keep the containment evacuated and contents disposed of properly as described on page 25.

Training, leak detection, record keeping, and other BMP's associated with underground storage tanks are part of the UST program administered by DEQ and are beyond the scope of this manual.

Minimum BMPs for Bulk Petroleum Storage:

These facilities are used for storage of petroleum products for marketing or wholesale distribution that typically have a total bulk storage capacity of 50,000 gallons or more.

1. Containment:

- Cathodically protect buried metal piping and the bottom of aboveground storage tanks in accordance with guidelines contained in American Petroleum Institute (API) 651;
- Install containment devices to prevent a surface release of fuel at the vehicle fueling area from discharging directly to a dry well, or surface waters.
- Secondarily contain tanks and above ground piping manifolds in facilities built or replaced after January 1, 2023.
- Install impermeable barriers or liners under bulk petroleum tanks installed or replaced after January 1, 2023.
- Install vapor monitoring devices at piping manifolds and valves to alert personnel of a release at bulk petroleum storage facilities built or replaced after January 1, 2023.

2. Standard Operating Procedures/Maintenance:

- Perform annual release response training exercises simulating the actions that will be taken during a release of fuel at the facility
- Train staff in the proper filling of aboveground storage tanks at the facility during tank filling operations, or establish a monitoring system capable of detecting and alerting local emergency personnel of a release during tank filling operations.
- Incorporate a monitoring system that includes vapor monitors located at any valve and/or piping manifold that controls the flow of fuel to the tanks and from the tanks to the dispensers. Incorporate overfill alarms on any aboveground fuel storage tank.
- Staff the monitoring system during tank-filling operations.
- Conduct annual integrity and leak testing of below grade metal fuel product piping to a pressure of one and a half times the operational pressure.

- Test the integrity of the shell and bottom of large capacity petroleum storage tanks (as defined in Ordinance 13.26.030) in accordance with standard schedules established by American Petroleum Institute (API) 653 5th edition. An inspection schedule and justification must be submitted to and approved by the District with a maximum inspection interval not to exceed 20 years.
- Designate and train a local responsible party in the use, maintenance, and inspection of the BMP components.

Critical SOPs for managing inventory and loading/off-loading are specific to the industry and beyond the scope of this BMP manual.

Minimum BMPs for Temporary Fueling Site:

This BMP applies to temporary fueling operations, typically two years or less, that are installed at construction sites, wood chipping operations, fire camps, or similar operations. Follow applicable BMPs for ASTs.

Temporary fueling site with liners under both storage and offload/onload lane (Note black inspection ports along lane). Photo credit: Panhandle Health District.

1. Containment:

- Install a poly liner under stationary tanker trailers and single walled tanks. The liner may be waived for double-walled tanks unless repeated coupling/uncoupling is occurring.
- Install a buried poly liner under the footprint of the vehicles that will be using the site.
- Inspection ports must be installed in a sump area of the liner. For other criteria on liner containment, see page 37.
- Store hoses and nozzles over containment at all times. For other AST BMPs, see page 13.

2. Standard Operating Procedures/Maintenance:

- Monitor the pad and main containment liners during precipitation events and do not allow to overflow with storm water. If storm water is not accumulating in a liner in a predictable manner based on current weather, liner is likely compromised and should be replaced.

3. Wastewater/Storm water:

- Storm water collected in the liners should be managed as described in storm water section on page 25.

Minimum AST BMPs for Fuel:

Farms and businesses often choose to store petroleum products such as gasoline, diesel fuel, and biofuels in aboveground storage tanks (ASTs). Properly installed tanks can have advantages over underground storage such as easy visual inspection, more convenient leak detection and containment, and the ability to relocate tanks when business practices change. A leak of only one drop per second can release about 400 gallons of petroleum into the environment in one year, resulting in significant soil and groundwater pollution. Poorly managed storage can lead to soil and water contamination, fire, high clean-up costs, and theft.

These ASTs are mounted on level impermeable ground with barriers to prevent vehicle collisions. Photo credit: Purdue Extension.

1. Design and Containment:

- Label and secondarily contain tanks or use double-walled tanks.
- Store hoses within secondary containment or off the ground for double walled tanks.
- Use tanks designed/rated for outdoor use.

2. Location/Siting:

- Locate tanks at least 100 ft from wells, surface water, and irrigation ditches.
- Place tanks on level impermeable material (concrete pad) to retain spills. Pavement or a concrete pad should be designed to hold the weight of a full fuel tank and resist shifting and frost-heaving.
- Raise and support tank to prevent ground contact for easy inspection and corrosion prevention. Tank supports should be manufactured to hold their weight when full (wood or hollow concrete blocks are not appropriate).
- Provide barriers to prevent vehicle collisions.

Inappropriately mounted tanks. Notice leaning tank in photo on left. Neither set up has secondary containment, gravel/soil can accept spills and make clean up difficult and soil or water contamination likely. Hoses are left on ground making degradation and releases more likely. No protection from vehicles (barriers) are provided. In photo on right one tank is gasoline and one is diesel but both tanks are labeled with 1203 (gasoline) placard. Photo credit: Purdue Extension (Left photo).

Additional/Other BMPs

OSHA, local Fire Code and other agency requirements related to storage of flammables may apply, including but not limited to:

- Minimum placement distance standards from buildings, power lines, and ignition sources
- Minimum distances between tanks
- Specific labeling and signage requirements
- Venting, leak detection on double walled tanks, liquid level gauge, and overfill protection (whistle valve).
- Fire guarding, explosion proof wiring and/or fittings, and grounding for tanks containing flammable liquids
- Performing tank inspections and maintaining inspection logs
- Displaying the depth of fuel conversion from inches to gallons on the tank

2.1.6 LIVESTOCK AND ANIMAL WASTE

These BMPs apply to owners of horses, cows, hogs, chickens, dog kennels, etc. to prevent manure run-off into storm water conveyances and surface waters. These BMPs are not meant to address Concentrated Animal Feeding Operations covered under the Montana DEQ General Permit MTG01000.

Discussion of Risks:
Manure contains bacteria, nitrogen, phosphorous and other pollutants. Nutrients in surface water can lead to algal blooms, fish die-offs, and impair other beneficial uses. Groundwater contamination with manure and nutrients can lead to human health illness.

Minimum BMPs:

There are several ways to reduce animal waste problems and control run-off from livestock housing areas.

1. Standard Operating Procedures:

- Never deposit animal waste in a river, stream, irrigation ditch, dry well, or storm water conveyance
- Clean up after your livestock. Remove manure frequently.
- Minimize overcrowding. Keep the number of animals proportional to the size of the confinement area so manure does not become unmanageable and accumulate.
- Relocate livestock to an area that is not sloped to drain to a storm water conveyance or waterway.
- Provide vegetated buffers between confinement areas and the road.
- Provide more land and rotation of animals to allow vegetation to recover and limit manure accumulation.
- Divert water to swales or other areas where it will not enter a waterway.
- When walking or riding animals, remove waste promptly from any storm water conveyance.

Additional/Other BMPs

- The "On-site Guide for Livestock Operators", a collaboration of the Montana Association of Conservation Districts, USDA-NRCS, MTDEQ, and the Montana State University Extension contains additional information for reducing risk of livestock operations to surface and groundwater: https://store.msuextension.org/publications/AgandNaturalResources/EB0213.pdf

2.1.7 PRESSURE WASHING

These requirements and BMPs apply to contractors who provide pressure washing services.

Discussion of risks:
Pressure washing surfaces can produce wastewater that can deliver contaminants into the storm system. Hot water, soaps, grease from restaurant dumpster areas, sediment from alleys, driveways, and sidewalks, and auto fluids from parking lots can be carried to storm drains which then flow into nearby surface waters like Rattlesnake Cr., the Clark Fork River, or the Bitterroot River, or into storm drains and groundwater.

Minimum BMPs:

1. Standard Operating Procedures:

- Operations will vary depending on the surface being washed (see Table 1 on pg. 16).
- Equipment (storm drain covers, absorbents, sediment filters, oil-booms) should be available and in working condition to allow for surfaces to be properly cleaned and drains to be sealed when applicable (pgs. 36-38).

2. Wastewater:

- Discharge to sanitary sewer is the best practice for wash water.
- Pressure washing operations that use hot water, soaps, detergents, or cleaning agents must be conducted on solid surfaces and collected and discharged to sanitary sewer. Be sure to consult the City of Missoula Waste Water Treatment Plant prior to planning any sanitary discharge.
- As outlined on pg. 16, depending on the activity, how it is done, and the type of surface that is being cleaned, wash water can go to a storm drain, a vegetated area, or the sanitary sewer.

Pressure Washing. Attribution-ShareAlike 2.0 Generic (CC BY-SA 2.0) Image credit: www.housepressurecleaning.com

Table 1. Minimum Pressure Washing BMPs. Processes below assume no hot water, soap, detergents, or chemicals are used.

Type of Surface	Potential Pollutants	Cleaning Method and BMPs	Proper Disposal[1]
Sidewalks, walkways, flat roofs	Sediment, debris, bird feces, mold, moss	1. Sweep loose dirt and debris. 2. Use absorbents to clean up any spills before washing. 3. Protect storm drains (filters required, absorbent devices as needed). 4. After washing, remove drain filter and absorbents.	Wash water: storm drain Debris: regular trash
Parking lots, parking garages, driveways, drive-throughs[1]	Sediment, auto fluids (engine oil, transmission fluid, antifreeze), debris	1. Sweep loose dirt and debris. 2. Use absorbents to clean up any spills before washing. 3. Protect storm drains (filters and oil-absorbent devices required) 4. After washing, remove drain filter and absorbents.	Wash water: storm drain or vegetated area[2] Debris: regular trash
Restaurant alleys/dumpster areas	Food grease	1. Sweep loose dirt and debris. 2. Block storm drains with covers. 3. Wash with hot water/soap as needed. 4. After washing, collect water with pump or vacuum.	Wash water: sanitary sewer connected to a grease interceptor Debris: regular trash
Buildings/Houses – unpainted or painted[3] with paint job in good condition	Sediment, debris, mold, moss	1. Place drop cloth below building to catch any paint chips. 2. Use absorbents to clean up any oil spots/spills before washing. 3. Protect storm drains (filters required, absorbent devices as needed). 4. After washing, remove debris caught in storm protection equipment.	Wash water: If contains paint residue: sanitary sewer. If no paint residue, may enter storm drain or vegetated area. Debris: regular trash

[1]If surfaces are heavily contaminated with engine oil or other hazardous chemical, these disposal guidelines do not apply. Contact the MVWQD for disposal guidance.
[2] Vegetated area must be large enough to prevent flooding of the area.
[3] These BMPs are not designed to address paint removal. If lead-based paint is suspected, contractors must be certified and adhere to the EPA Renovation, Repair, and Painting Rule. Contact the Region 8 EPA office for more information (https://www.epa.gov/mt/forms/contact-us-about-epa-montana).

2.1.8 RESTAURANTS AND FOOD SERVICE

These BMPs apply to the outdoor storage of grease and cooking oils at food service establishments. Separate requirements may apply from the applicable Wastewater Treatment Plant for sanitary sewer grease disposal.

Discussion of Risk: Grease is a contaminant that can enter storm water and our local rivers and streams when improperly managed. Never wash the grease storage area or food service equipment (utensils, floor mats, or receptacles) into the alley, streets, or parking lots, or into a storm drain.

Cones were unable to prevent vehicle collisions and release of used cooking oil from these drums

Minimum BMPs

1. Standard Operating Procedures/Maintenance:

- If stored in outdoor containers for recycling, prevent drips and overflow when transferring and emptying containers.
- Clean up spills promptly. Old grease can be loosened with a stiff brush. Spread cat litter over the area to be cleaned to absorb the grease. Sweep up the absorbent and throw it away.
- Pressure washing may be used if operator follows appropriate pressure washing BMPs (pgs. 15-16) and collects and disposes of water properly.

Additional/Other BMPs

- Label storage containers.
- Provide a canopy to prevent precipitation from entering storage area.
- Routinely inspect storage area.
- Train employees on spill prevention and response.
- Keep sufficient absorbent materials available.

2.1.9 ROAD MAINTENANCE

These BMPs apply to businesses or entities that provide road maintenance services including asphalt application and repair work, concrete application and repair work, de-icing, dust suppression, and street sweeping.

Discussion of Risk: Perceptions of risk for groundwater contamination in this industry are often skewed by the fact that asphalt/sealer, concrete, deicing fluids, sand/gravel, etc. are put on the ground in the normal course of their use and construction. However, there are proven risks from repeated release of these chemicals that should not be overlooked. Continual spills and leaks of asphalt and sealer during tank and truck filling can result in water-soluble asphalt product entering the soil, dry wells, and potentially groundwater. Concrete is a mixture of cement, water, and aggregate material. Portland cement is made by heating a mixture of limestone and clay containing oxides of calcium, aluminum, silicon and other metals in a kiln and then pulverizing the resulting clinker. The fine aggregate particles are usually sand. After concrete is poured at a construction site, the chutes of ready mixed concrete trucks, hoppers of concrete pump trucks, wheelbarrows, and tools must be washed out to remove the remaining concrete before it hardens. Concrete washout water is a caustic slurry (pH near 12) containing toxic metals that can harm water resources. Deicers contain salts (MgCl2, NaCl, etc.) that when spilled or misapplied can lead to groundwater and surface water contamination. Street sweepings can contain metals, fuel and petroleum products, animal waste, glass, litter, etc. and these chemicals could leach out and impact water resources.

Minimum Road Maintenance (asphalt and concrete) BMPs:

1. Containment:

- Secondary containment is required for certain quantities (listed in MMC 13.26.034) of regulated substances and must follow applicable BMPs on pages 24-28.

2. Standard Operating Procedures/Maintenance:

- Do not spray out asphalt/sealer hoses onto a bare ground surface.
- Schedule painting, striping, marking, asphalt paving, concrete replacement and concrete cutting activities for dry weather. Do not conduct these activities during or immediately after a rainfall.
- Protect nearby storm drain inlets from maintenance work (e.g. preparing the surface for an asphalt cap, chip sealing, concrete breaking or saw cutting). Place appropriate covers, rock wattles, straw bales, sand bags, filter fabric, etc. (some examples on pgs. 36-38) around or over inlets to protect them from entry of wastes, dusts, overspray or slurry.
- When saw cutting concrete, use the minimum amount of water. Let the waste slurry dry and then sweep or vacuum it up before leaving the location. Alternately, a wet vacuum may be used to pick up the wet slurry immediately after cutting is complete.
- Collect concrete washout in a lined pit, tank, or other container.

Filtering concrete washout water for reuse. Photo credit EPA.

3. Wastewater/Storm water:

- Dispose of wastewater from asphalt tank wash-out and the cleaning of spray application to the local Wastewater Treatment Plant.
- Allow concrete washout water to evaporate or filter/treat water prior to reuse or disposal to the local Wastewater Treatment Plant.
- Dispose of or recycle concrete solids (they can be reused as fill or in new concrete mix) remaining after filtering or settling.
- Sweep up wastes and dispose of the wastes appropriately. Do not sweep or hose down wastes into storm drains.

Improper maintenance of asphalt tank and insufficient SOPs for preventing ground contamination

Additional/Other BMPs

- Secondary containment for asphalt emulsions is recommended.
- Maintain training programs and checklists for loading/off-loading, cleaning apparatus and rinsing job truck tanks, as well as spill response protocol.
- When working on bridges, transport paint and materials to and from the job site in containers with secure lids and tied down to the transport vehicle. Do not transfer or load paint over water.

Minimum Deicing BMPs

These deicing BMPs apply to storage and application processes for deicers applied on Missoula city and county roads. Approval and testing requirements for deicers are required and these details are covered in the Missoula Valley Water Quality Code.

1. Containment:

- Deicers stored at or above Threshold Quantities must meet applicable secondary containment requirements detailed on pages 24-28.
- Remove storm water from outdoor containment to maintain required containment volume. (Containment systems for ice/dust control salts are often designed and operated so that storm water in the system can be re-used in application mix).

2. Standard Operation Procedures:

- Apply deicers in such a manner and at such a rate that pure product (liquid or solid) remains on the roadway.
- Apply deicers using trucks equipped with ground-speed controllers.
- When applying deicers for anti-icing purposes prior to or during a storm event, apply at a rate not to exceed 30 gallons per lane mile.
- Whenever snow accumulations on the road are equal to or greater than 2 inches, apply deicers after snow plowing to improve the effectiveness of a deicer and to reduce the amount applied.
- Keep daily records for locations and amounts of deicer applied.
- Maintain records for yearly volumes of deicer applied.
- Report any application of a non-approved deicer or a spill of deicer in an amount greater than 100 gallons or 1,000 pounds (solid) to the District within 24 hours of application or release.

Minimum Street Sweeping BMPs:

1. Containment:

- The entire sweeping storage area should be more than 100 feet from, and at a lower elevation than, any water body, creek, river, ditch, or storm drain inlet.
- Store waste on a paved surface sloped to drain to the water-holding basin.
- Provide berms to minimize run-on and run-off of storm water.
- Protect the drying debris from wind re-entrainment (this can be done with operational protocols to not allow piles to accumulate and to remove quickly once dry).
- Waste does not need to be covered but tarping prior to rain event will reduce storage dry times.

Dewatered materials drain into adjacent settling pool. Water from pool then passes through an oil/water separator, followed by a sand filter bed, and then to a bio-infiltration pond. Photo credit: City of Spokane Decant Facility

2. Disposal

- Once dewatered, sweepings and catch basin sediment should be profiled for metals, VOC's, and extractable petroleum hydrocarbons prior to disposal at landfill.
- If screened, the grit can be re-used for road sanding or pothole fill without testing. These sweepings should be stored in an area that prevents precipitation from washing sediment into storm systems or surface water.
- Street sweepings are considered a Group II waste by MTDEQ and cannot be used as clean fill without appropriate testing.

3. Standard Operating Procedures/Maintenance

- Inspect and maintain any temporary debris storage areas. If debris is stored in containment or under cover, repair any cracks or splits that might allow debris to escape back into the environment.

2.1.10 VEHICLE WASHING

These BMPs apply to commercial establishments which routinely wash vehicles (e.g., car washes and facilities with wash bays), or clean and degrease mechanical parts (including mobile steam cleaning operations). Fleet and truck washing can be associated with virtually any of the business classes and other BMPs in this manual.

Discussion of Risk: During a car wash, dirty water containing soap and detergents, residue from exhaust gas, motor oils, paint, gasoline, sediment, and other debris washes off the cars and flows to nearby storm drains. Water that flows into dry wells flows though soil and into the Missoula Valley Aquifer. Car wash water that flows past the parking lot and into the road can enter storm drains that flow directly to our local rivers.

Minimum BMPs:

1. Wastewater/Storm water:

- If a permanent facility, connect to public sewer and use an appropriate pretreatment system (e.g., an oil-water separator) as required by the Missoula and Lolo Wastewater Treatment Plants.
- Wash water from mobile steam machines should be disposed of through a sanitary sewer or licensed waste hauler. Use an appropriate pretreatment system (e.g., an oil-water separator) as required by the Missoula and Lolo Wastewater Treatment Plants. Be sure to consult the Wastewater Treatment Plant prior to planning any sanitary discharge.
- Collect and dispose of the wastewater in a lined lagoon (when public sanitary sewer is unavailable).
    - The lagoon must be fenced to prevent access by the public and animals.
    - The system must be designed by a civil engineer licensed in Montana and the design must be approved by the Department prior to use.
    - The wastewater must be pre-treated through an oil/water separator prior to discharge to the lagoon.
    - The lagoon must be lined with an impermeable liner and must be capable of containing and treating the entire volume of wastewater produced at the facility.
    - The design life of the system must be specified by the engineer.
    - The system will not be allowed to operate beyond the design life specified by the Engineer, unless and until its performance is evaluated by a civil engineer and certified by the engineer as meeting the original performance criteria.
    - The lagoon and oil/water separator must be regularly maintained, which includes removal and proper disposal of all sediments, oils, and/ or sludge which accumulates in the system.
    - Records of any maintenance performed, as well as waste disposal manifests must be kept and be accessible to regulatory officials.
- Recycle wash water. There are numerous products on the market to recycle wash water.
- Uncontaminated water generated from rinsing (no detergents) vehicles on display at vehicle dealerships is considered an allowable non-stormwater discharge and may be disposed of through on-site dry wells, swales or otherwise infiltrated onsite.

2.1.11 Well Development/Utility Excavation

The construction of irrigation, water supply, geothermal, and other wells may produce large volumes of water during the drilling process. Utility work involving horizontal drilling can also produce drilling mud waste and sediment-laden water. BMPs will depend upon the quantity of water generated, soil types, proximity to storm water inlets or surface water, time of year, terrain, etc.

Sediment basin during well development. The rate of filling of this basin exceeded sedimentation. Filtration was necessary prior to discharge to the storm water system.

Discussion of Risk: The water produced from the well-drilling activity is often laden with rock cuttings, silts, clays, etc. referred to as suspended solids. The suspended solids can be substantially increased if drilling water is allowed to flow overland and erode the ground surface. The transport of suspended solids is considered a non-point pollution source and may adversely impact surface water, wetlands, storm water basins, etc. Sediment leaving the site can blanket the stream bottom and smother fish eggs, macroinvertebrates, and aquatic plants. The influx of turbid water may also lead to an increase in water temperature and decrease in dissolved oxygen which further stresses the aquatic community.

Minimum BMPs for sediment reduction:

1. Standard Operating Procedures/Maintenance:

- Adjust drilling processes to reduce sediment load to development water including using lowered drilling rig air pressure, drill phasing, and reducing drill bit size.
- Trap sediment laden water with a Geotech fabric lined trench, tanks or basin. This allows time for sediment to settle out before discharge.
- Utilize sediment filtration bags to remove fine sediment from the drill rig or settling pond as water flows through.
- Limit pressure of uncontaminated development water when discharging to a piped storm water system to avoid scouring the pipes and displacing sediment.

2. Wastewater/Storm water:

- Uncontaminated pumped groundwater may enter storm water systems.
- Contaminated groundwater (with sediment or other contaminants) may require a MPDES permit prior to discharge to groundwater or surface water.
- Disposal of untreated well development water or drill slurries may be discharged to sanitary sewer with permission from the applicable Wastewater Treatment Plant.

2.1.12 Other Businesses

There are a number of businesses that handle fuels, oil-based paints, solvents, and other chemicals at levels below those requiring a pollution prevention permit or secondary containment (e.g. auto-body shops, small engine repair shops, full service equipment rental shops, recreational vehicle/boat maintenance, art studios, etc.).

Discussion of Risks: Medium to small businesses in this class have been known to have difficulty getting waste hauler contracts due to economic inefficiencies for the hauler. Equipment/vehicle washing wastewater which carries oil, fuel, pesticide, and cleaning agents is often illegally discharged to the ground surface. Oil-water separators that serve wash pads frequently become overwhelmed with dirt and oil. Solvent, solvent wastes, and other low-volume chemicals can be highly toxic and mobile in the environment. Spills on shop floors or during transport can carry contaminants to the ground surface or nearby dry wells.

Minimum BMPs:

1. Containment:

- Label and secondarily contain volumes of regulated substances at threshold levels or more as described on pages 24-28.

2. Standard Operating Procedures:

- Inspect all incoming vehicles, parts, and equipment that are stored temporarily outside for leaks, use drip pans, provide absorbent materials, clean up spills promptly, provide for proper disposal of waste oil, fuel, and hazardous waste, and do not pour/convey wash water, liquid waste, or other pollutants into storm water systems, dry wells, or onto the ground.
- Transfer waste fluids to closed containers, drums, or tanks promptly and do leave in buckets or pans outside.
- Collect antifreeze from RV/boat plumbing for waste disposal when flushing is necessary.
- Launder or dispose of rags properly.

3. Wastewater/Storm water:

- All wastewater from vehicle/equipment washing must go to an approved wastewater disposal system (as described on pg 21).

Optional/Additional BMPs

- Containment of other products such as solvents that are in containers of 5 gallons or less is encouraged especially if there is a frequent transfer of product into and out of the container.
- Store indoor flammables in vented fireproof storage cabinets.

2.2 BMP Components

2.2.1 Secondary Containment

Secondary containment systems provide an essential line of defense in the event of a failure of the primary containment, such as a bulk storage tote, portable containers, and piping. Proper secondary containment construction, sizing, siting, and maintenance are essential to preventing releases that could endanger our groundwater and surface water.

Minimum BMPs for all Secondary Containment systems:

- Construct secondary containment to be non-reactive and resistant to the materials contained.
- Design to prevent infiltration of contained substance into the ground in the event of a release from the primary storage container and associated piping and manifolds.
- Locate containment in area that isolates the contained substance from soils, industrial or commercial injection wells, floor drains, or any other potential surface and groundwater entry point.
- Design to contain at least 110% of the volume of the largest container, or 10% of the aggregate volume of all containers, whichever is greater.
- If located out-of-doors, incorporate overhead protection or other BMPs to prevent overtopping of contained substance from the containment structure due to precipitation accumulation.

Construction: Materials used in the construction of secondary containment must be chemically compatible with the product being stored. Containers shall be constructed of materials of sufficient thickness and composition so as not to be weakened as a result of contact with accumulated storm water or discharged product.

Siting and Capacity: Maintaining effective secondary containment outdoors is a challenge when uncovered. Water and debris can enter the area and allow a spill to crest the secondary containment berm. Water can also freeze which then reduces the volume of the secondary containment and can compromise/destabilize the berm. To reduce or eliminate the introduction of precipitation into a secondary containment system, design engineering and procedures should be in place to maintain capacity of the secondary containment (e.g. roof/canopy, draining, pumping, increased sizing and inspection schedule, etc). Roofing may not be effective if the footprint is small and the site is subject to wind. Runoff from the roof should not add to collected water in designated spill containment areas such as a fueling pad. Protecting the containment structure from collision by vehicles or vandalism are other considerations for outdoor storage.

When chemicals are stored indoors, the building may serve as the secondary containment if doorways/openings contain a berm/lip to prevent liquid from escaping, incompatible chemicals do not share the same containment area, and the total cubic volume meets the 110% capacity requirements of the Code. For storage of smaller volumes some buildings can still meet the secondary containment requirements if the floor does not slope to drain to a bay door or other opening.

Operation and Maintenance: Secondary containment systems require regular service and maintenance. To ensure the system continues to function as designed, it is important to regularly inspect and test the containment structure, manage the accumulation of spills, leaks, and storm water and to pro-actively train employees in these systems.

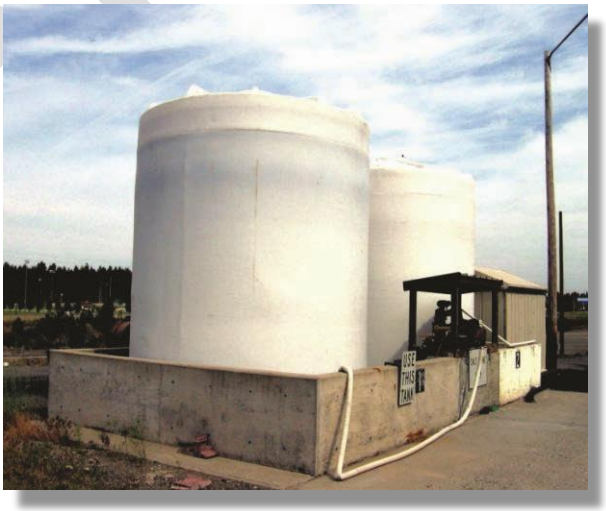
- Leaking Product and Accumulated Spills: Containment systems should be kept relatively free from releases. Accumulated product should be re-used if possible. In no case should any accumulation compromise the containment capacity. If the capacity is being compromised, the accumulation should be evacuated to buckets or drums and stored in containment pending shipment and disposal. Often it is convenient and practical to have your hazardous waste hauler evacuate your containment systems when they come to collect other waste streams and containers.

- Containment Integrity & Hydrostatic Testing : Hydrostatic testing of containment systems is necessary under certain circumstances. First, systems fabricated onsite without engineering design should be hydrostatically tested prior to use. This simply involves filling the containment to the required capacity with water and observing for leaks and change in the water level. Other systems that use liners or underground vaults also need occasional hydrostatic testing. The time of observation should be at least 24 hours for systems ≤ 600 gallons and 48 hours for larger systems. Contaminated water must be disposed of by a licensed septic waste hauler approved for that particular waste type. Uncontaminated water may be disposed of onsite through storm water management facilities, an approved wastewater treatment system connection or recycled.

- Storm water Collected in Secondary Containment Systems : When storm water is collected in containment systems, it must be evaluated for contaminants prior to on-site disposal. Visual evaluation may be sufficient for products that cause a sheen on the storm water. Other contaminants such as inorganic ions can be measured with do-it-yourself colorimetric kits (like testing for chlorine in a pool). Otherwise, a sample may need to be submitted to a laboratory. When contaminants are present in a concentration greater than Montana state water quality standards (DEQ-7), water must be managed as wastewater or hazardous waste, as appropriate. This contaminated water may not be disposed of to the surface or subsurface of the ground

2.2.1.1 Concrete Box, Curb, Or Recessed Slab

Description: An open box, basin, or recessed floor typically designed to contain large volumes of critical materials. Using recessed floors or stem-walls, this design concept can provide broad area containment for an entire room or building footprint.



Concrete box containment. Photo credit: Panhandle Health District

Design Criteria & Features: These components typically require an engineered design to consider specific criteria such as topographic grades, compressive strength, permeability, and other quality control measures for the concrete work. Other criteria include:

- Walls and curbs should be part of a mono-pour with the slab, or floor, whenever possible. If a cold joint is used instead, then chemical-resistant water stops must be used in the joint.
- Epoxies or other industrial sealants must be used when chemical resistance or additional sealing is needed.
- Drain outlets should be clearly marked with valve status obvious and consistent with a handle or flag direction.
- Containment vaults may be required to facilitate monitoring and recovery of chemical or storm water.

Operation & Maintenance Notes: Since many of these applications are outdoors, storm water management considerations should be made. Diligent maintenance of cracks with appropriate chemical resistant caulk and grout prevents leaks and helps keep cracks from getting worse. Grinding and cleaning of the crack surface prior to sealing is critical. Self-leveling polyurethane caulks work best in horizontal applications. Drain valves should be kept closed and checked on a regular basis through a posted/recorded self-inspection process.

2.2.1.2 Double Walled Tank

Description: A tank within a tank, the inner tank being separated from the outer by a space, or interstice, that provides at least 110% containment for the inner tank.

Design Criteria & Features: The interstitial space must be easily monitored, preferably with a visible float gauge or electronic gauge. Dip sticking is acceptable on smaller tanks (≤600 gallons). If the tank is double walled such that a breach of the internal layer is protected by the outer wall, the tank is in compliance. Keep in mind that double-walled tanks do not protect surrounding soil from overtopping, spills during filling or emptying, or from an outside breach. Therefore, a secondary containment area outside of an above ground double-walled tank is a better practice.

Operation & Maintenance Notes: The interstitial space must be monitored as part of a regular self-inspection process. Associated piping joints, valves, and nozzles should be kept tight and weep-free.

2.2.1.3 Fabricated Steel Trough

Description: A welded steel box or pan into which drums or smaller tanks (usually < 600 gallons) are placed. For larger areas, an alternative design using angle-iron bolted and glued or gasketed to a concrete floor may be used.

Steel containment for motor oils. Photo credit: Panhandle Health District

Design Criteria & Features: The gauge of the steel must be sufficient to withstand the activities and abuse that the box or pan will receive. Prior to use, the welds, glue, or gasket must be tested by filling the containment with water and checking for leaks. An inspector may request to witness the test. Depending on the size and number of containers being stored, the walls on a box type of containment may need to be quite high in order to satisfy the 110% (or 10% aggregate) containment criterion. This should be considered carefully prior to construction especially if it will be necessary to move containers into and out of the containment. Glue or gaskets used in a bolted angle-iron application must be chemically compatible with the critical material stored.

Operation & Maintenance Notes: These containment devices may need to be evacuated or pumped out periodically. If the facility is not equipped to perform pumping and cleaning of the containment, your hazardous waste hauler should be able to perform that service for you.

2.2.1.4 Piping, Coupling, & Valve Containment

Description: A trench, chase, pan, or second pipe wall designed to collect and contain release from pipes, couplings, or valves. Containment should be provided for these components whenever they are located outside of a main containment area or in the ground. (Does not apply to fuel piping compliant with UST rules regarding monitoring and cathodic protection.)

Design Criteria & Features: Whenever possible, piping and onload/off-load couplings should be located over the containment device used for containing the bulk material being conveyed. These applications are usually very site specific. General criteria are as follows:

- Trenches, chases, pans and open second walls (non-pressurized double walls) should drain back to a main containment or a containment vault (this will increase the amount of storm water collected, if exposed).
- The method used should account for and contain any feasible pressurized fluid trajectory.
- Closed second pipe walls (pressurized interstitial space) should be provided with a gauge, alarm, or other means of detecting a release.

Fabricated catch tray. Photo credit: Panhandle Health District

Operation & Maintenance Notes: Operation and maintenance will depend on the specific method used but may include visual inspection of races and vaults, checking leak detection devices, and repairing cracks. Releases should be put back into production or disposed of in accordance with law.

2.2.1.5 Prefabricated Containment

Description: Typically, a polyethylene, rectangular, shallow box covered with a grate on which drums sit. These devices are often referred to as a containment pallet. They are available in any number of sizes and volumes, usually with fork-lift access. Some have optional polyethylene covers to allow placement outside. Containment pallets are also available for tote containers.

Design Criteria & Features: These devices are not always designed to meet the 110% containment volume criterion. Most containment pallets have fork-lift entry slots for ease of relocation. Ramps can be purchased or constructed to allow access for wheeled drum trucks. Check the manufacturer's specifications on compatibility between the containment material and the chemical you are storing.

Prefabricated drum containment. Photo credit: Panhandle Health District

Operation and Maintenance Notes: These containment devices need to be evacuated or pumped out periodically when product transfer in or out of the drums is common. If the facility is not equipped to perform pumping and cleaning of the containment, your hazardous waste hauler should be able to perform that service for you. Some devices offer integral drain plugs which simplify evacuation, but plugs are often known to leak or be left open inadvertently. Replace containment devices that have been damaged.

2.2.1.6 TEMPORARY SYSTEMS

Description: Typically comprised of a prefabricated collapsible unit, or a geomembrane, these systems are usually approved only for construction projects or other temporary uses.

Design Criteria & Features: Prefabricated system application must meet the intended use as specified by the manufacturer. Geomembrane systems should meet all criteria described in the Membrane Liner component on page 37.

Operation and Maintenance Notes: Establish protocols for handling spills and storm water. Inspect systems regularly for damage and product or storm water accumulation. Collapsible, drive-on containment systems will need immediate response protocol for a release within the containment.

Example of temporary storage. Photo credit: Panhandle Health District

2.2.2 Drainage and Treatment Systems

2.2.2.1 Storm Drains vs. Sanitary Sewers

Storm drains and sanitary sewers have two distinct functions. It is important to understand the difference:

Storm Drains are intended to collect and transport runoff from rainfall. Storm drain systems do not remove pollutants from water before it is discharged into ground water, rivers and streams. These are typically the drains found in streets and parking lots. Dry wells (also referred to as dry-sumps, storm water injection wells, Class V wells, or storm sumps) are the most common, and deliver storm water into a ~8' deep hole in the ground lined with concrete and composed of a gravel bottom. Some storm drains have identical looking inlets but are piped to an outfall which discharges into a water body like a river or stream.

Sanitary Sewers collect wastewater from indoor plumbing such as toilets, sinks, washing machines, and other drains and take it to a wastewater treatment plant. The treatment plant removes pollutants from wastewater before it is discharged to the river.

2.2.2.2 Containment Vault

Description: Containment vaults are watertight structures designed for spill containment. They are typically used at facilities where spills are not permitted to enter an oil-water separator for discharge to the wastewater treatment plant or where a connection to sanitary sewer is unavailable.

Design Criteria & Features:

- Vaults must be sized appropriately for the expected spill volumes.
- Containment vaults must be installed with an audible/visual alarm set at 75% capacity. Clean and test the alarms, floats and sensors at the time of pumping.
- Containment vaults located under a facility must be vented and have a water seal using a sanitary T to prevent vapors from entering the building.

Operation & Maintenance Notes:

- Containment vaults must be inspected and maintained regularly to remain effective.
- At a minimum, perform annual hydrostatic testing of vault to ensure all seams are sealed and no leaks are present.
- Wastes must be hauled by a qualified hazardous waste hauler to an approved destination. Keep all receipts/records onsite for no less than 3 years.

2.2.2.3 *Fueling Pad*

Description: A concrete pad onto which vehicles park while refueling. The pad is sloped to one or more trench drains or catch basins. Trench drains and catch basins discharge to a containment vault or to an oil-water separator which then discharges to a properly maintained, irrigated vegetated swale or retention pond.

Fueling pad with elevated perimeter to exclude run-on of storm water. Photo credit: Panhandle Health District

Design Criteria & Features: Fueling pads and canopies at fueling facilities must be designed in accordance with City of Missoula design standards. Additional design features:

- Covered fueling pads (canopies) minimize transport of petroleum products to storm water. If a canopy is used, canopy roof drains must bypass the pad and any containment vaults or oil-water separators.
- Fueling hoses cannot extend past the canopy if a drive-off could allow fuel to exit the fueling pad and enter nearby storm drains.
- Fueling pads must incorporate trench drains or other drainage system to deliver fuel spills to containment vaults or oil-water separators. Proper grades are critical to ensure flows reach catch basins and separators.
- Containment vaults must be sized appropriately to contain potential spills. A 500-gallon minimum capacity applies to fueling islands.
- Grades or rolled curbs must be used to exclude storm water from outside the footprint of the pad.
- Catch basins and rolled curbs should be part of a mono-pour with the pad (preferred). If a cold joint is used, fuel resistant water stops must be used in the joint. Expansion cracks should be filled with a self-leveling polyurethane caulk.
- Outlets of catch basins should be significantly above the bottom of the basin to allow for sludge accumulation. A screen, inverted elbow, or 'T' should be placed on the outlet to minimize floating debris entering the separator. The gasket or grout seal around the outlet should be watertight.

Operation & Maintenance Notes: Once the pad is constructed, its grade should be tested by pouring water in representative locations of the pad to verify that all flows go to collection. Most concrete is subject to cracking over time. Therefore, diligent maintenance of cracks with appropriate chemical resistant caulk or grout is necessary in order to maintain the integrity of the containment (Cleaning and preparation of the crack surface prior to sealing is critical). Self-leveling polyurethane caulks work best in horizontal crack sealing applications. Trench drains and catch basins need to be cleaned frequently to keep them clear of sediment and debris. Sludge from catch basins should be handled as per the oil-water separator section in this manual (pg. 31).

2.2.2.4 Oil-Water Separator

Description: Oil-water separators are designed to remove and contain floatable contaminants such as oil, gasoline, and grease from a wastewater or storm water stream. As the waste stream passes slowly through the separator, these lighter contaminants can float to the surface and become contained by the 'T' outlets and absorbent pillows. Most often separators are used in fuel island applications for pretreatment prior to swale discharge or pretreatment of floor-drain wastes prior to discharge to public sanitary sewer.

Design Criteria & Features:

- There are two basic types of oil-water separators, conventional and coalescing plate interceptors (CPIs). Conventional separators typically feature a two-chambered 1,000-gallon tank with inlet and outlet 'T's'. This design relies upon gravity, the physical characteristics of oil and sediments, and proper sizing and other design parameters to ensure effective pollutant removal. CPI separators contain closely-spaced plates to increase the removal efficiency of oils and grease. All separators must have watertight joints. Refer to the City of Missoula standard drawings for additional detail.
- The separation of oil from water is most effective under conditions of tranquil flow and sufficient retention times. Design the separator to minimize flow rate through the separator to avoid resuspension of oil, scouring and resuspension of sediment, and overwhelming the unit's ability to treat the water.
- Oil-water separators are not effective for treating storm water at high flows. On sites where storm water may enter the separator, use of other storm water BMPs in series can decrease flows and improve efficiency. For example, in some situations a bypass manhole with baffle and trash rack can prevent larger storm events from overwhelming the separator (diagram on pg. 34)

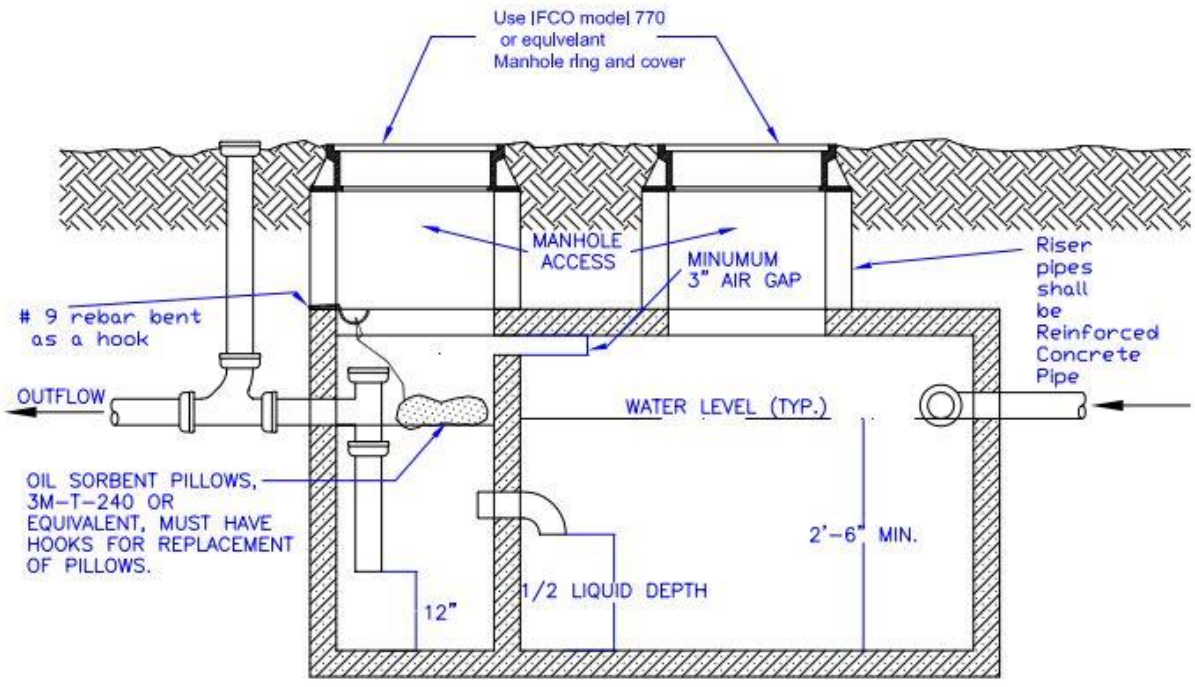


Diagram of a conventional oil-water separator

Operations & Maintenance Notes:

- Oil-water separators must be inspected and maintained regularly to remain effective. Inspect the tank at a minimum of once every 3 months (quarterly). Keep all inspection, maintenance, and hauling receipts/records onsite for no less than 3 years.
- Absorbent pillows placed inside chambers reduce contaminated levels of hydrocarbons in water. These should be replaced as needed when saturated.
- Inspect the unit frequently to assess the oil and sludge layers. Determine the oil/water interface using a gauge stick and water finding paste. The separator should be pumped when ¼ inch or more of material (oil, fuel) can be detected on top of the water and/or when sludge accumulation is 25% of the total volume. Sludge depth can be determined by using a measuring stick and marking when contact is made with top layer of sludge and again when stick reaches the bottom of the tank. An oil level sensor can be used in place of manual detection.
- Any standing water removed should be replaced with clean water to prevent oil carry-over through the outlet.
- Wastes must be hauled by a qualified hazardous waste hauler to an approved destination. Petroleum products can adhere to suspended solids and sediment but some sludges may not qualify as hazardous waste. Toxicity characteristic leaching procedure (TCLP) analysis, paint filter test, or total petroleum hydrocarbon (TPH) testing may be required prior to disposal at a solid waste management facility.
- The destination of discharges from oil-water separators are dependent on the business type, application, quantity and type of waste received. See applicable business type section for approved discharge information.

2.2.2.5 On/Offload Pad

Description: A concrete pad sloped to a drain that passes material spilled during bulk transfer into a containment area; usually a concrete box type containment or an approved containment vault.

Design Criteria & Features: This component typically requires an engineered design to consider critical site-specific criteria such as topographic grades, compressive strength, permeability, and other quality control measures for the concrete work. Other criteria include:

- Catch basins and curbs should be part of a mono-pour with the slab, or floor, whenever possible.
- If a cold joint is used instead, then chemical resistant water stops must be used in the joint.
- The footprint of the pad should accommodate any feasible fluid release trajectory.
- Epoxies or other industrial sealants must be used when chemical resistance or additional sealing is needed.
- Grades on the pad must be accurate to channel all spilled product to containment. Grades outside the pad footprint must preclude any surface storm water from flowing onto the pad.
- A receiving containment area must be designed to accommodate the excess storm water from this pad and still provide the containment volume required for the material stored; For design purposes, assume at least one week's accumulation during peak seasonal precipitation.

Operation & Maintenance Notes: Since this application is typically outside, storm water management considerations should be made. Most concrete work is subject to cracking over time. Diligent maintenance of cracks with appropriate chemical resistant caulk and grout is necessary in order to maintain the integrity of the containment. Cleaning and preparation of the crack surface prior to sealing is critical. Self-leveling polyurethane caulks work best in horizontal applications. Catch basins and drains should be checked/cleaned on a regular basis through a posted/recorded self-inspection process.

2.2.2.6 TANK FUELING AREA

Description: The area surrounding petroleum underground storage tank filling ports is subject to releases of petroleum products during tank fueling. Protecting water resources down-gradient of these areas can be challenging due to existing grading, lack of vegetated swale options, and the presence of storm water flows. Dry wells should not be located down-gradient of the tank ports.

Design Criteria & Features:

This tank fueling area is graded to drain to a vegetated swale that incorporates a curb cut and beehive grate.

- Drainage may be designed to direct storm water and releases from tank fueling areas to vegetated swales.
- Spills may be directed to oil-water separators or catch chambers that discharge to vegetated swales or dry wells.
- If discharging to a dry well from the separator or catch chamber, a minimum separation of 20' must exist between bottom of dry well and groundwater.
- Oil-water separators and catch chambers are not effective for treating storm water at high flows. Design the separator or catch chamber to minimize the flow rate to avoid resuspension of oil, scouring and resuspension of sediment, and overwhelming the unit's ability to treat the water and retain contaminants.
- Sizing an oil-water separator based on flow rate should be done using the Rational Method: Q = CiA (Q = flow rate in CFS, C = rational coefficient, i = rainfall intensity (in/hr), and A = area in acres). Intensity should be based on the 2-year 5-minute storm.
- On sites where storm water may enter the separator, use of other storm water BMPs in series can decrease flows and improve efficiency. For example, in some situations a bypass manhole with baffle and trash rack can prevent larger storm events from overwhelming the separator.

Operation & Maintenance Notes:

- The tank fueling area release BMPs (swales, oil-water separators, etc.) must be inspected and maintained regularly to ensure effective function.

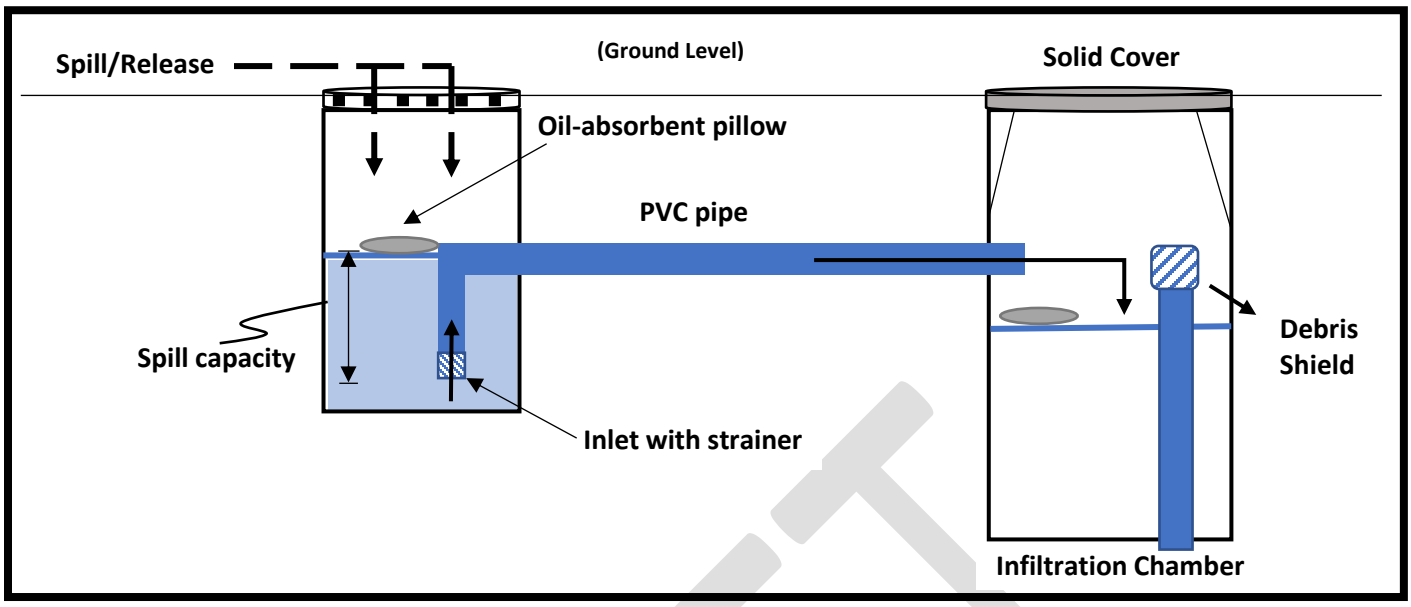
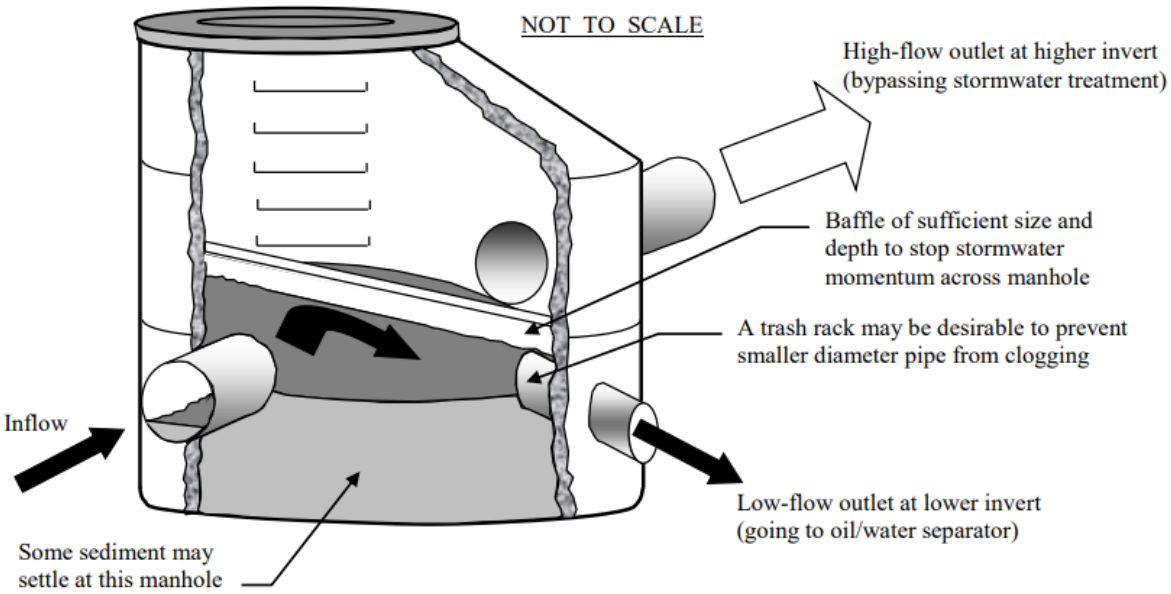


Diagram of a potential drainage system for a tank fueling area. An oil-water separator or appropriately sized concrete catch chamber connected to an infiltration chamber or dry well allows for increased retention time in chamber and settling of solids. Stormwater and fuel releases contained in chamber pass through oil-absorbent prior to entering infiltration chamber or dry well.



A storm water bypass manhole with baffle. This BMP allows for storm water from high-flow events to bypass the oil-water separator. Maintenance of this type of BMP is required to ensure effective function of the system (sludge removal, oil removed, clogs removed, etc.). Diagram credit: City of Knoxville BMP Manual.

2.2.2.7 VEGETATED/BIOFILTRATION SWALE

Description: A vegetated swale is an above ground earthen impoundment that uses the natural filtering ability of soils to remove pollutants in storm water runoff. Storm water runoff is retained in the basin with the only means of emptying being through evapotranspiration and infiltration. Infiltration basins have high pollutant removal efficiencies and can help recharge groundwater.

Design Criteria & Features: Flow-based treatment systems should be sized to address site-specific runoff treatment flow rates. Final storm water treatment and disposal components, such as swales, are discussed in the Montana Post-Construction Storm Water BMP Design Guidance Manual.

Parking lot bio swale design. "Conservation Design Forum Project: Fountain View Recreation Center, Carol Stream, IL" by Center for Neighborhood Technology is licensed with CC BY-SA 2.0. To view a copy of this license, visit *https://creativecommons.org/licenses/by-sa/2.0/*

2.2.3 EQUIPMENT

2.2.3.1 ABSORBENTS

Description: Floor-dry, kitty-litter, oil-absorbent pads, work well to absorb liquid hydrocarbons from surfaces. Kitty litter can be swept up with a stiff bristled broom prior to disposal. Absorbent pads can be lifted after oils have soaked into the fabric. Absorbents saturated with hydrocarbons must be disposed of properly.

2.2.3.2 BOOMS OR OIL-SOCKS

Description: Oil-socks and booms can be placed around storm drains and conveyances to selectively absorb hydrocarbons. They can also be effective at preventing debris from entering the storm drain. Oil-socks or booms saturated with hydrocarbons must be disposed of properly.

Oil-absorbent pads used on fuel spill in Missoula.

Spill kit containing absorbent pads and booms. Photo credit: awarehousefull.com

Example of granular/dry absorbent. Photo credit: Oildri.com

2.2.3.3 Membrane Liner

Description: A flexible polymeric geomembrane usually fabricated from polyethylene (HDPE or LDPE) or polyvinyl chloride (PVC). Typically lain in an excavated depression or the edges are placed over earthen berms or eco blocks to create a basin. Due to their shortcomings, liners are typically used to contain less hazardous materials. They are useful for covering extremely large areas, as containment under buildings, or as temporary containment.

Technician seaming a 'boot' in a liner perforation. Photo credit: Panhandle Health District

Design Criteria & Features:
Minimum accepted thickness for a geomembrane liner used for containment is 30 mils for PVC liners and 60 mils for HDPE liners, or must have engineered installation criteria that warrantee a minimum 10 year life for the particular application. Liners must be placed on a carefully prepared base material that will protect it from damage when weight is applied. Grades of the base should include a containment vault area that facilitates monitoring and recovery of storm water or released chemical. Grades should be set to minimize standing fluid when the vault is empty.

Perforations and seams must be booted and sealed.
Covering a liner with a geotextile, sand, gravel, or soil may prolong its life (check with the manufacturer).
When covered with sand/gravel or soil, an inspection port must be inserted into the vault. The port must accommodate a suction hose for the evacuation of storm water or released material. Prior to use, the rim elevation must be clearly marked in the inspection vault by filling the liner with water until a static level is reached.

Operation & Maintenance Notes: Liners have limited lifespan, particularly if exposed to air and sun. Leaks may result from poor installation controls, physical wear & tear, and chemical degradation over time. The manufacturer should declare a useful or warranted life span in the specifications for the liner. If the liner has exceeded that lifespan, then it should be replaced or hydrostatically tested on an annual basis. Self-inspections should note if and how much storm water is collected. A hydrostatic test should also be performed If storm water is not accumulating as it should.

2.2.3.4 Oil-Stop Valve (OSV)

Description: This device consists of a passive float valve configuration where the float is more dense than oil/fuel but less dense than water. This allows water to pass through the system, but the float valve sinks and closes in the presence of a given amount of oil/fuel. This component is considered a necessary part of a BMP system for bulk fuel containment where storm water is allowed to flow through the containment.

Design Criteria & Features: The full level of the tank or pit containing an OSV must be below the main containment level. Discharge from this device must pass through an oil-water separator and on to a vegetated swale.

Operation & Maintenance Notes: Oil or fuel must be evacuated from the pit periodically and disposed of as hazardous waste.

2.2.3.5 Sediment Filters

Description: Sediment filter socks (e.g. bio-bags, rock socks) may be placed upgradient and around storm drains as a protective barrier against debris and sediment. A "Dandy Sack" placed under the storm drain grate can also filter out large sediment. To remove silt and sand use 200 mesh screen or smaller.

Dandy Sack placed within storm drain.

Filter sock for catching sediment.
Photo credit: newpig.com

A good candidate drain for an oil-absorbent sock.

2.2.3.6 Stormdrain Covers And Protection

Description: These devices are placed on top of a storm drain and create a seal to prevent water from entering. Because storm drains are in low lying areas, water will pool at the seal location. For sites with relatively smooth surfaces, manufactured berms may be placed around a storm drain to allow water to pool as well. Pooled water can then be collected with a sump-pump or shop vac.

Storm drain cover

Adhesive spill berm. Photo credit: newpig.com

APPENDIX

AGENCY CONTACTS

Missoula Valley Water Quality District
301 W Alder
Missoula MT 59802
406-258-4890
www.missoulacounty.us/wqd

Montana Department of Environmental Quality (DEQ)
Water Protection Bureau – MPDES permitting, groundwater discharge, non-point source pollution, TMDLs, technical assistance etc.
www.deq.nt.gov/Water
406 444-5546

City of Missoula Wastewater Treatment Plant
406-552-6600

City of Lolo Water and Sewer District
405-273-2733

City of Missoula Building Department – Building permits, standard design drawings, SWPPP compliance, etc.
552-6630

Missoula County Public Works – Building permits and storm water infrastructure in Missoula County
406-258-3701

City of Missoula Storm Water Utility – Can help locate and identify types of storm drains near your facility
406-552-6364

Hazardous Waste/Oily Waste Haulers and Recycling
Tri State Waste Recyclers – 406-274-4080
Emerald Services – 406-543-7911
Safety Kleen – 509-928-8353
Nash Enterprises – 406-721-1773

ALTERNATIVE BEST MANAGEMENT PRACTICES (BMP) REQUEST

THIS FORM is to be used to request the use of an alternative BMP to one or more of the minimum BMP requirements or for a major modification to one of the required BMPs as stated in the MVWQD BMP Manual. It can be used by those who already have BMPs on their site that may differ from the requirements, or in cases where implementation of one or more of the required BMPs is not the best or preferred solution.

AFTER RECEIVING THIS REQUEST, the Department will: (1) Review the request; (2) Notify the applicant the request was received and when a decision will be made; and (3) Notify the applicant in writing of approval or denial, and an explanation of the decision.

INSTRUCTIONS:

1. Answer each question on this form as briefly as possible while still conveying relevant information.
2. Additional pages can be used if necessary.
3. Return this request to: Missoula Valley Water Quality District
   301 W Alder
   Missoula MT 59802

TO BE COMPLETED BY APPLICANT:

Applicant's name:_____ Date: _____

Owner name: _____

Facility name:_____

Facility address:_____

_____

Email:_____

Phone number: _____

1. Type of business/facility (brief description)
2. Specific activity or component under consideration for BMP:
3. What the Manual requires:
4. Why this will not work at facility:
5. Proposed Alternative (feel free to attach additional information):

DEFINED TERMS

Aboveground Storage Tank (AST) - A tank that is used to contain an accumulation of a Regulated Substance, and the volume of which is more than 90% above the surface of the ground.

Allowable Non-Storm Water Discharge - Any one of the water-generating activities listed in Missoula Municipal Code 13.27.200 (B).

> What are examples of allowable non-stormwater discharges?
>
> Any one of the following water-generating activities (with conditions): Irrigation water; irrigation ditch return flows; landscape irrigation; permitted diverted stream flows; rising groundwater; rising natural floodwaters; uncontaminated groundwater infiltration to separate storm sewers; uncontaminated pumped groundwater; discharges from potable water sources; foundation drains; air-conditioning condensation; springs; water from crawl space or basement pumps; footing drains; lawn watering, residential car washing; residential dechlorinated swimming pool and hot tub discharges; residential street washing; charity or other non-commercial car washes, flows from riparian habitats and wetlands; uncontaminated water from irrigation system meter pits; flows from emergency firefighting activities; fire hydrant flushing; water line flushing; and residential gardening or landscaping activities, municipally owned dechlorinated swimming pool discharges, municipal water tank draining, and water from street washing (including sidewalks and medians) that is conducted by City staff or under contract with the City.

Aquifer - A water-bearing, subsurface formation capable of yielding sufficient quantities of water for beneficial use.

Aquifer Protection Area - The areas within the City of Missoula and within five miles outside the Missoula city limits which are within the boundaries of the Missoula Valley Water Quality District.

Best Management Practices (BMPs) – Control measures taken to mitigate potential contamination of soil, groundwater and surface water and described in detail in the Department's Best Management Practices for Pollution Prevention Manual. For businesses or activities for which local BMPs do not yet exist, national, regional, or appliable industry standard BMPs apply.

Board - The Board of Directors of the Missoula Valley Water Quality District.

Bulk Petroleum Storage - A facility used for storage of petroleum products for marketing or wholesale distribution that has a total bulk storage capacity of 50,000 gallons or more.

Carbon Absorption/Evaporation Technology: A treatment technology which removes chlorinated solvents from a water-solvent mixture.

Chemical Manufacturing Facility - A facility having a North American Industry Classification Code (NAICS Code) between 325180 and 325998 which handles Regulated Substances in an amount equal to or greater than threshold quantities.

Chlorinated Solvent – An organic solvent containing chlorine atoms within its molecular structure.

Class II Landfill - An area of land or an excavation, as defined in Montana Administrative Rules A.R.M. 17.50.504, where group II or group III wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile. Group II and III wastes are defined in Montana Administrative Rules, A.R.M. 17.50.503.

Class III Landfill - An area of land or an excavation, as defined in Montana Administrative Rules A.R.M. 17.50.504, where group III wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile. Group III wastes are defined in Montana Administrative Rules, A.R.M. 17.50.503.

Closure Permit - A permit issued by the Department in accordance with section 13.26.060 of this code when a facility is permanently closed or has been abandoned for one year.

Community Water System - Any public water supply system, as defined in A.R.M. 17.36.101, which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Component - Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function.

Containment Vault – A sealed tank that is limited to accepting and containing accidental spills. A tank that receives wastewater from a fixture is not a containment vault.

Contamination - The presence of any substance (chemical, radiological, or biological) or any condition (temperature, pH, taste, color, odor, turbidity) in soil or water which may create or threaten to create a hazard to human health or the environment, or impair the usefulness of the soil or water.

Deicer - A chemical substance used to melt ice or snow deposited on roads or other surfaces.

Department – The Missoula City-County Health Department

District - The Missoula Valley Water Quality District

Dry Cleaning Establishment - Any facility that uses a transfer machine, dry-to-dry vented unit, or dry-to-dry closed loop unit that uses chlorinated solvents to clean textiles.

Dry Well - A USEPA-designated Class V storm water injection well: a bored, drilled, or driven shaft or dug hole whose depth is greater than the opening width at the widest point, for the subsurface infiltration of storm water.

Dry-to-Dry machine: A machine that washes and dries textiles without transferring them.

EPA - United States Environmental Protection Agency.

Facility - An area that includes the real property, building or buildings, and appurtenant structures, or any subset of the proceeding elements, used by a person.

Fleet - More than 5 vehicles or locomotives.

Fueling Facility - A facility that dispenses petroleum products for commercial sale, public use, or for fleet vehicle operation, excluding bulk petroleum storage facilities and farm and residential tanks of 1100 gallons or less capacity used for storing motor fuel for non-commercial purposes.

Fueling Pad – A concrete pad on which vehicles are refueled. Future Wellhead Reservation Area - The surface area overlying a portion of the Missoula Valley Aquifer which, because of aquifer recharge, groundwater flow and potential sources of contamination, should be protected against contamination to assure high quality groundwater for future drinking water source development. This area includes all land within township 13N, range 19W, sections 27 and 34, all land south of the Clark Fork River within township 13N, range 19W, section 22, and all land within the northwest and northeast quarter sections of township 13N, range 19W, section 34 of Montana Meridian, Missoula County, Missoula, Montana.

Groundwater - Water that fills the interconnected spaces of material below the water table (upper limit of saturation), or water which is held in the unsaturated zone by capillary action.

Handle - To use, generate, process, produce, package, treat, store, emit, discharge or dispose of a Regulated Substance, excluding (a) handling during continuous non-stop transit, (b) transit via pipeline, and (c) handling of parcels and packages by the United States Postal Service, motor freight companies, and private delivery services.

Hazardous Waste - A hazardous waste as defined pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261.

Hazardous Waste Management Facility - All contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of a hazardous waste, as defined in A.R.M 17.31.301 as a Major Hazardous Waste Management Facility. A Hazardous Waste Management Facility may consist of several treatment, storage, or disposal operational units.

Independent Certified Laboratory: A laboratory outside the control of the person requesting approval from the Department that is certified by the EPA or other appropriate certifying agency to complete testing.

Industrial or Commercial Injection Well - A well or septic system that receives industrial or commercial wastes from a public or private facility, excluding wells or septic systems used solely for storm water discharge, sanitary waste discharge and/or discharge or extraction of non-contact heating and cooling system water.

Large Capacity Petroleum Storage Tanks - A tank greater than 50 feet tall or having diameter greater than 30 feet used for storage of petroleum products.

Missoula Valley Aquifer - The aquifer underlying the Missoula Valley which supplies the area with water.

New - Constructed, installed or brought into operation after the original effective date of this code (Ord.2906, 1994).

Noncomplying Activity - An activity involving the handling of a Regulated Substance in an amount equal to or greater than its threshold quantity within a Future Wellhead Reservation Area.

Non-transient Non-community water system - Any public water supply system as defined in A.R.M. 17.38.202 that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.

Perchloroethylene (C_2CL_4) - A colorless liquid used as a dry-cleaning fluid; general degreaser of metals; solvent for waxes, fats, oils, and gums; constituent of printing inks and paint removers. Synonyms include: Tetrachloroethylene, Tetrachloroethene, PCE, PERC.

Person - Any person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer or any other entity whatsoever or any combination of such, jointly or severally.

Piping Manifold - The area(s) of a piping system fitted with apertures for making multiple connections.

Pollution Prevention Permit - A permit required of a person who owns, operates or controls a facility that handles any Regulated Substance in an amount equal to or greater than four times its threshold quantity. Pollution Prevention Permits are issued by the District in accordance with section 13.26.050 of this code.

Primary Container - A container which comes into immediate contact with a Regulated Substance.

Public Sewage Disposal System - A system, as defined in §75-6-102 MCA, for collection, transportation, treatment or disposal of sewage that is designed to serve or serves 15 or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.

Public Water Supply System - A system, as defined in §75-6-102 MCA, for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 15 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

Refrigerator Condenser: A vapor recovery system into which a chlorinated solvent vapor stream is routed and condensed to segregate the chlorinated solvent.

Regulated Substance - Any liquid substance, semi-liquid substance, or soluble solid on the most current Superfund Amendments and Reauthorization Act (SARA), Title III List of Lists published by the Office of Pollution Prevention and Toxic Substances, U.S. Environmental Protection Agency, Washington D.C., any petroleum product, any hazardous waste, or any other substance identified in this code.

Release - Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a Regulated Substance into the soil, groundwater or surface water (including the past release of a regulated substance), but excluding:

1. releases contained in a secondary containment area or the indoor workplace, provided the release does not exit the indoor workplace.
2. The use of pesticides as defined in §80-8-102(30) MCA when they are applied in accordance with approved federal and state labels, and any discharge permitted by a local, state, or federal agency.

Replacement - replacement or replace shall mean:

1. Replacing, repairing, upgrading or improving a facility at a cost which equals or exceeds 50% of the value of the facility at the time of such act.
2. Replacing a component or more than 50% of a component of a facility.
3. Reoccupation of a facility, reuse of a component at a facility, or restarting an activity which has been out of service or not practiced for a period of one year.

Secondary Containment – Containment to and external from the primary container adequate to prevent the release of Regulated Substances to native soil, surface water, or groundwater.

Soluble Solid - A solid that exists in a powder form and has a particle size less than 100 microns, is handled in solution or molten form, or meets the criteria for a National Fire Protection Association (NFPA) rating of 2, 3, or 4 for reactivity.

Storm Water - As defined in 13.27.030

Tank - Stationary device designed to contain an accumulation of substances and constructed of non-earthen materials (e.g. concrete, steel, plastic) that provide structural support.

Tank Fueling Area - The area surrounding underground storage tanks subject to releases of petroleum products during tank fueling, including the area surrounding the tanker truck during fueling.

Threshold Quantity - Quantities of Regulated Substances (excluding products in vehicle fuel tanks, aerosol spray cans, products used for research at educational institution laboratories, and substances sold for retail in a container equal to or less than 5 gallons capacity) handled at a facility at any one time, regardless of location, number of containers, or method of storage.

1. For those Regulated Substances specifically listed in the Superfund Amendments and Reauthorization Act (SARA) Title III List of Lists and for those Regulated Substances which are listed hazardous waste defined pursuant to 40 CFR Part 261, as amended, the threshold quantity shall be the reportable quantity published in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 40 CFR 302, Table 302.4 or the Superfund Amendments and Reauthorization Act (SARA) Section 355, Appendix A.

2. For those Regulated Substances that are characteristic hazardous wastes defined pursuant to 40 CFR Part 261, as amended, the threshold quantity shall be based on the substance contained in the waste with the lowest threshold quantity.

3. For those Regulated Substances not listed in the Superfund Amendments and Reauthorization Act Title III List of Lists, and for those Regulated Substances that are not a hazardous waste, the following quantities of qualifying substances at a facility at any one time shall constitute a Threshold Quantity:

    a. Gasoline - 250 pounds or 25 gallons
    b. Diesel/Jet Fuel/Kerosene - 500 pounds or 50 gallons
    c. Used Motor Oil/Hydraulic Oil/Transmission Fluid - 1000 pounds or 100 gallons.
    d. Unused Motor Oil/Hydraulic Oil/Transmission Fluid - 2,000 pounds or 200 gallons
    e. Deicer – 1000 gallons or 10,000 pounds

4. For those substances that are mixtures of one or more regulated substance, the threshold quantity shall be based on the amount of the substance contained in the mixture with the lowest threshold quantity. If the proportions of regulated substances in the mixture are unable to be determined, the threshold quantity of the component in the mixture with the lowest threshold quantity will apply to the entire quantity (volume or weight) of the mixture.

Transfer Dry Cleaning Machine: A machine unable to both wash and dry garments, which emits chlorinated solvent to the atmosphere during transfer.

Underground Storage Tank (UST) - Any one or combination of tanks as defined in MCA 75-11-503.

Vegetated Swale - A vegetative-lined infiltration cell designed and constructed to collect and treat contaminants in storm water runoff.

Vehicle Fueling Area - The area surrounding a fuel island or dispenser(s) subject to releases of petroleum products during vehicle fueling, including a 3-foot release collection buffer zone extending beyond the lanes of traffic next to the fuel islands or dispenser(s).

Waste Oil - Oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

Well - A structure, pit or hole sunk into the earth to reach a resource supply such as water.

Wellhead - The physical structure or device at the land surface surrounding a well, from or through which groundwater flows or is pumped from an aquifer.

Draft dated 5/3/2022
Ordinance

An ordinance generally amending Missoula Municipal Code Chapter 13.26 entitled "Missoula Valley Water Quality ordinance" to amend and update regulations necessary to protect Missoula's sole source aquifer.

Be it ordained that Chapter 13.26 Missoula Municipal Code is hereby amended as follows:

Chapter 13.26

MISSOULA VALLEY WATER QUALITY CODE

Sections:

13.26.010 SHORT TITLE--APPLICABILITY--~~CONSTRUCTION~~AUTHORITY. This code shall be known as the "Missoula Valley Water Quality Code." It is intended to protect the public health, safety and general welfare of those ~~utilizing~~ who depend on the Missoula Valley Aquifer and surface waters in the Missoula Valley for drinking water, recreation and other beneficial uses. This health-related code is adopted by the Missoula City Council for enforcement inside the city limits. If both the County Commissioners and the local health board approve enforcement of this chapter extraterritorially within five (5) miles of the city limits, this chapter is thereafter enforceable outside the city limits within five (5) miles of the city limits ~~The provisions of the ordinance are deemed to be a health ordinance and shall be effective within the City of Missoula and all places within five miles outside the city limits~~ that are within the boundary of the Missoula Valley Water Quality District, a local water quality protection district authorized by ~~pursuant to~~ §7-13-4504 ~~4306~~ MCA ~~(1993~~. This code establishes prohibitions and restrictions to prevent surface water and groundwater contamination, and to protect public health, safety and welfare. This code shall be broadly construed to affect its purposes. Nothing in this code shall relieve a person from the requirements of any other federal, state, or local law. ~~If any provision of this ordinance duplicates any local, state or federal statute or regulation, the local, state or federal statute or regulation shall govern. However, if the requirements of this ordinance are more stringent than the requirements of the local, state or federal statute or regulation, the requirements of this ordinance~~If there is a discrepancy between this code and a local, state or federal statue or regulation, the more stringent ~~-~~shall govern.

Commented [MR1]: (Updated language to include BMP manual and process for extraterritorial application).

13.26.011 ADMINISTRATIVE RULES AUTHORIZED. The Department is authorized to develop Best Management Practices that implement, interpret, or prescribe city law or policy or describes city practice or procedure with respect to the subject matter found in Chapter 13.26 of the Missoula Municipal Code. Best Management Practices developed pursuant to this section must be adopted by the Mayor pursuant to section **2.03.020**, Missoula Municipal Code to be enforceable within the city limits. . If both the Board of County Commissioners and the local health board approve the BMP manual, this . If both the Board of County Commissioners and the local health board approve the BMP manual, this . If both the Board of County Commissioners and the local health board approve the BMP manual, this manual is thereafter enforceable outside the city limits within five (5) miles of the city limits that are within the boundary of the Missoula Valley Water Quality District.

Commented [MR2]: (NEW – added to allow for BMP manual as admin rule)

13.26.020 PURPOSE. In order to protect the Missoula valley's sole source of drinking water and surface waters and to secure and promote the general public health, safety and welfare, the Missoula City Council declares that:

A. The improper storage, handling, use, transport, production or disposal of certain substances in the Missoula Valley is potentially harmful to the quality of water in the Missoula Valley

B. Affirmative measures to prevent water pollution are the most effective means available to protect water quality.

C. Local authority is needed to require pollution prevention measures at facilities which handle significant quantities of certain substances, and to prohibit and deter activities which pose threats to the quality of the Missoula Valley Aquifer.

D. The construction, development and use of new public water supply system wells in proximity to existing sources of contamination is potentially harmful to the quality of drinking water obtained from such wells. The location of identified contaminant sources which pose serious threats of contamination will also be prohibited in proximity to public drinking water wells, in order to minimize the risk of contamination.

13.26.030 DEFINITIONS. For purposes of this code and associated Best Management Practices, the following terms have the following meanings unless the context clearly indicates otherwise:

Aboveground Storage Tank (AST) - A tank that is used to contain an accumulation of a Regulated Substance, and the volume of which is more than 90% above the surface of the ground.

Allowable Non-Stormwater Discharge - Any one of the water-generating activities listed in Missoula Municipal Code 13.27.200 (B).

Commented [MR3]: (NEW- incorporates ARM 17.30 description and city storm water utility definition of allowable discharges)

Anti-Icing: The application of a deicer before or during a storm event for the purpose of preventing ice and snow accumulation on the roadway.

Aquifer - A water-bearing, subsurface formation capable of yielding sufficient quantities of water for beneficial use.

Aquifer Protection Area - The areas within the City of Missoula and within five miles outside the Missoula city limits which are within the boundaries of the Missoula Valley Water Quality District.

Best Management Practices (BMPs) – Control measures taken to mitigate potential contamination of soil, groundwater and surface water and described in detail in the Department's Best Management Practices for Pollution Prevention Manual. For businesses or activities for which local BMPs do not yet exist, national, regional, or appliable industry standard BMPs apply.

Commented [MR4]: (NEW)

Board - The Missoula Valley Water Quality District Board.

Commented [MR5]: (Reworded)

Bulk Petroleum Storage - A facility used for storage of petroleum products for marketing or wholesale distribution that has a total bulk storage capacity of 50,000 gallons or more.

Carbon Absorption/Evaporation Technology: A treatment technology which removes chlorinated solvents from a water-solvent mixture
.

Chemical Manufacturing Facility - A facility having a North American Industry Classification Code (NAICS Code) between 325180 and 325998
which handles Regulated Substances in an amount equal to or greater than threshold quantities.

Chlorinated Solvent – An organic solvent containing chlorine atoms within its molecular structure.

Class II Landfill - An area of land or an excavation, as defined in Montana Administrative Rules A.R.M. 17.50.504, where group II or group III wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile. Group II and III wastes are defined in Montana Administrative Rules, A.R.M. 17.50.503.

Class III Landfill - An area of land or an excavation, as defined in Montana Administrative Rules A.R.M. 17.50.504, where group III wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile. Group III wastes are defined in Montana Administrative Rules, A.R.M. 17.50.503.

Closure Permit - A permit issued by the Department in accordance with section 13.26.060 of this code when a facility is permanently closed or has been abandoned for one year.

Community Water System - Any public water supply system, as defined in A.R.M. 17.36.101, which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Component - Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function.

Containment Vault – A sealed tank that is limited to accepting and containing accidental spills. A tank that receives wastewater from a fixture is not a containment vault.

Contamination - The presence of any substance (chemical, radiological, or biological) or any condition (temperature, pH, taste, color, odor, turbidity) in soil or water which may create or threaten to create a hazard to human health or the environment, or impair the usefulness of the soil or water.

Deicer - A chemical substance used to melt ice or snow deposited on roads or other surfaces.
District - The Missoula Valley Water Quality District

Dry Cleaning Establishment - Any facility that uses a transfer machine, dry-to-dry vented unit, or dry-to-dry closed loop unit that uses chlorinated solvents to clean textiles.

Dry Well - a USEPA-designated Class V stormwater injection well: a bored, drilled, or driven shaft or dug hole whose depth is greater than the opening width at the widest point, for the subsurface infiltration of stormwater.

Dry-to-Dry machine: A machine that washes and dries textiles without transferring them
.

EPA - United States Environmental Protection Agency.

Facility - An area that includes the real property, building or buildings, and appurtenant structures, or any subset of the proceeding elements, used by a person.

Fleet - More than 5 vehicles or locomotives.

Fueling Facility - A facility that dispenses petroleum products for commercial sale, public use, or for fleet vehicle operation, excluding bulk petroleum storage facilities and farm and residential tanks of 1100 gallons or less capacity used for storing motor fuel for non-commercial purposes.

Fueling Pad – A concrete pad on which vehicles are refueled.

Groundwater - Water that fills the interconnected spaces of material below the water table (upper limit of saturation), or water which is held in the unsaturated zone by capillary action.

Handle - To use, generate, process, produce, package, treat, store, emit, discharge or dispose of a Regulated Substance, excluding (a) handling during continuous non-stop transit, (b) transit via pipeline, and (c) handling of parcels and packages by the United States Postal Service, motor freight companies, and private delivery services.

Hazardous Waste - A hazardous waste as defined pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261.

Hazardous Waste Management Facility - All contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of a hazardous waste, as defined in A.R.M 17.31.301 as a Major Hazardous Waste Management Facility. A Hazardous Waste Management Facility may consist of several treatment, storage, or disposal operational units.

Commented [MR7]: (Revised to reflect current ARM reference)

Independent Certified Laboratory: A laboratory outside the control of the person requesting approval from the Department that is certified by the EPA or other appropriate certifying agency to complete testing.

Industrial or Commercial Injection Well - A well or septic system that receives industrial or commercial wastes from a public or private facility, excluding wells or septic systems used solely for stormwater discharge, sanitary waste discharge and/or discharge or extraction of non-contact heating and cooling system water.

Large Capacity Petroleum Storage Tanks - A tank greater than 50 feet tall or having diameter greater than 30 feet used for storage of petroleum products.

Missoula Valley Aquifer - The aquifer underlying the Missoula Valley which supplies the area with water.

New - Constructed, installed or brought into operation after after September 7, 1994.

Noncomplying Activity - An activity involving the handling of a Regulated Substance in an amount equal to or greater than its threshold quantity within a Future Wellhead Reservation Area.

Non-transient Non-community water system - Any public water supply system as defined in A.R.M. 17.38.202 that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.

Perchloroethylene (C_2CL_4) - A colorless liquid used as a dry-cleaning fluid; general degreaser of metals; solvent for waxes, fats, oils, and gums; constituent of printing inks and paint removers. Synonyms include: Tetrachloroethylene, Tetrachloroethene, PCE, PERC.

Person - Any person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer or any other entity whatsoever or any combination of such, jointly or severally.

Piping Manifold - The area(s) of a piping system fitted with apertures for making multiple connections.

Pollution Prevention Permit - A permit required of a person who owns, operates or controls a facility that handles any Regulated Substance in an amount equal to or greater than four times its threshold quantity. Pollution Prevention Permits are issued by the District in accordance with section 13.26.050 of this code.

Primary Container - A container which comes into immediate contact with a Regulated Substance.

Public Sewage Disposal System - A system, as defined in §75-6-102 MCA, for collection, transportation, treatment or disposal of sewage that is designed to serve or serves 15 or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.

Commented [MR8]: (Revised for consistency with MCA)

Public Water Supply System - A system, as defined in §75-6-102 MCA, for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 15 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

Commented [MR9]: (Revised for consistency with MCA)

Commented [MR10]: (subjective)

Refrigerator Condenser: A vapor recovery system into which a chlorinated solvent vapor stream is routed and condensed to segregate the chlorinated solvent.

Commented [MR11]: (Revised for clarity)

Regulated Substance - Any liquid substance, semi-liquid substance, or soluble solid on the most current Superfund Amendments and Reauthorization Act (SARA), Title III List of Lists published by the Office of Pollution Prevention and Toxic Substances, U.S. Environmental Protection Agency, Washington D.C., any petroleum product, any hazardous waste, or any other substance identified in this code..

Commented [MR12]: (Revised to remove reference to board adoption and personal use exemption)

Release - Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a Regulated Substance into the soil, groundwater or surface water (including the past release of a regulated substance), but excluding:

1. releases contained in a secondary containment area or the indoor workplace, provided the release does not exit the indoor workplace.

2. The use of pesticides as defined in §80-8-102(30) MCA when they are applied in accordance with approved federal and state labels, and any discharge permitted by a local, state, or federal agency.

Replacement - replacement or replace shall mean:

1. Replacing, repairing, upgrading or improving a facility at a cost which equals or exceeds 50% of the value of the facility at the time of such act.
2. Replacing a component or more than 50% of a component of a facility.
3. Reoccupation of a facility, reuse of a component at a facility, or restarting an activity which has been out of service or not practiced for a period of one year.

Secondary Containment – Containment to and external from the primary container adequate to prevent the release of Regulated Substances to native soil, surface water, or groundwater.

Soluble Solid - A solid that exists in a powder form and has a particle size less than 100 microns, is handled in solution or molten form, or meets the criteria for a National Fire Protection Association (NFPA) rating of 2, 3, or 4 for reactivity.

Stormwater - as defined in 13.27.030

Tank - Stationary device designed to contain an accumulation of substances and constructed of non-earthen materials (e.g. concrete, steel, plastic) that provide structural support.

Tank Fueling Area - The area surrounding underground storage tanks subject to releases of petroleum products during tank fueling, including the area surrounding the tanker truck during fueling.

Threshold Quantity - Quantities of Regulated Substances (excluding products in vehicle fuel tanks, aerosol spray cans, products used for research at educational institution laboratories, and substances sold for retail in a container equal to or less than 5 gallons capacity) handled at a facility at any one time, regardless of location, number of containers, or method of storage

.

1. For those Regulated Substances specifically listed in the Superfund Amendments and Reauthorization Act (SARA) Title III List of Lists and for those Regulated Substances which are listed hazardous waste defined pursuant to 40 CFR Part 261, as amended, the threshold quantity shall be the reportable quantity published in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 40 CFR 302, Table 302.4 or the Superfund Amendments and Reauthorization Act (SARA) Section 355, Appendix A.

2. For those Regulated Substances that are characteristic hazardous wastes defined pursuant to 40 CFR Part 261, as amended, the threshold quantity shall be based on the substance contained in the waste with the lowest threshold quantity.

3. For those Regulated Substances not listed in the Superfund Amendments and Reauthorization Act Title III List of Lists, and for those Regulated Substances that are not a hazardous waste, the following quantities of qualifying substances at a facility at any one time shall constitute a Threshold Quantity:

   b.a. Gasoline - 250 pounds or 25 gallons
   b. Diesel/Jet Fuel/Kerosene - 500 pounds or 50 gallons
   c. Used Motor Oil/Hydraulic Oil/Transmission Fluid - 1000 pounds or 100 gallons.
   d. Unused Motor Oil/Hydraulic Oil/Transmission Fluid - 2,000 pounds or 200 gallons

Commented [MR14]: (New – defined to bring agreement between 13.26 and 13.27)

Commented [MR15]: .(Replaced this with the definition for "Dry well" to bring agreement between 13.26 and 13.27)

e. Deicer – 1000 gallons or 10,000 pounds (New)

4. For those substances that are mixtures of one or more regulated substance, the threshold quantity shall be based on the amount of the substance contained in the mixture with the lowest threshold quantity. If the proportions of regulated substances in the mixture are unable to be determined, the threshold quantity of the component in the mixture with the lowest threshold quantity will apply to the entire quantity (volume or weight) of the mixture.

Transfer Dry Cleaning Machine: A machine unable to both wash and dry garments, which emits chlorinated solvent to the atmosphere during transfer.

Underground Storage Tank (UST) - Any one or combination of tanks as defined in MCA 75-11-503.

Used Oil - Oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

Vegetated Swale - A vegetative-lined infiltration cell designed and constructed to collect and treat contaminants in stormwater runoff.

Vehicle Fueling Area - The area surrounding a fuel island or dispenser(s) subject to releases of petroleum products during vehicle fueling, including a 3-foot release collection buffer zone extending beyond the lanes of traffic next to the fuel islands or dispenser(s).

Well - A structure, pit or hole sunk into the earth to reach a resource supply such as water.

Wellhead - The physical structure or device at the land surface surrounding a well, from or through which groundwater flows or is pumped from an aquifer.

13.26.032 PROHIBITED ACTIVITIES

It is unlawful for any person to:

A. Cause contamination or to place, cause to be placed, or allow to remain in place any substance in a location where it is likely to cause contamination of soil, groundwater or surface water;

A.B. Distribute, sell, offer, or expose for sale products within the Aquifer Protection Area containing Perchloroethylene in any quantity. Those products containing Perchloroethylene used at dry cleaning establishments are exempt from this provision, provided the person who owns, operates, or controls such Facility obtains a Pollution Prevention Permit from the Department and complies with provisions of 13.26.050 and applicable BMPs

C. Discharge anything that does not meet the definition of stormwater or an Allowable Non-Stormwater Discharge to a municipal separate storm sewer system.

D. Discharge stormwater from Tank Fueling Areas directly to storm drains (dry sumps or inlets piped to outfalls)

E. Discharge stormwater from Vehicle Fueling Areas to storm drains (dry sumps or inlets piped to outfalls).

F. Construct or operate an Industrial or Commercial Injection Well.

Commented [MR16]: (This has been moved to REGULATED SUBSTANCES AND POLLUTION MANAGEMENT– GENERAL REQUIRMENTS)

Commented [MR17]: (Formerly referred to as Waste Oil. EPA uses Used Oil to refer to this substance)

Commented [MR18]: (Edited term to more commonly used term. Formerly called 'grass infiltration swale)'.

Commented [MR19]: (Moved from the former Prohibited Activity Section 13.26.080)

Commented [MR20]: (Moved from the former Pollution Prevention Requirements Section 13.26.040 with additional requirement that they comply with provisions of new dry cleaner BMPs. Use at educational laboratories is limited and waste disposal already regulated under 40 CFR part 262 subpart K or 262.15)

Commented [MR21]: (New provision to comply with MS4 requirements)

Commented [MR22]: (Moved from the former Pollution Prevention Requirements 13.26.040, strengthened to apply to any storm drain, also in BMP manual).

Commented [MR23]: (Moved from the former Pollution Prevention Requirements 13.26.040, strengthened to apply to any storm drain and to all facilities, new and existing, also in BMP manual)

Commented [MR24]: (Moved from the former Pollution Prevention Requirements 13.26.040 (H), removed the caveat that an EPA Underground Injection Control Permit may be issued)

G. Construct or operate a new or Replacement Facility which handles a Regulated Substance in a quantity equal to or greater than its Threshold Quantity within the Future Wellhead Reservation Area.

B. Install a new private drinking water supply well if the primary structure is within 200 feet of a water main which is part of an existing Public Water Supply System regulated by the Montana Public Service Commission, or which is owned or operated by the City of Missoula, Missoula County, or any consolidated city and county water or sewer district as defined in Title 7, chapter 13, parts 22 and 23, and the property abuts the right-of-way in which the main is located, unless the owner of the existing Public Water Supply System denies connection.

After January 1, 2023, connect any structure to a well if the structure is within 200 feet of an existing Public Water Supply System.

I. Construct or operate a new:

1. Hazardous Waste Management Facility, Class II Landfill, Large Capacity Petroleum Storage Tank, Chemical Manufacturing Facility, fuel pipeline, Fueling Facility not meeting design standard BMPs, or a Regulated Substance tank not meeting the requirements of section 13.26.036 of the Missoula Municipal Code (Awithin 1000 feet of a Community or Non-Transient Non-Community Water Supply System.

1.2. Class III Landfill, railroad track, or the discharge point of a Public Sewage Disposal System within 250 feet of a Community or Non-Transient Non-Community Water Supply System.

J. Violate any provision set forth in a permit issued pursuant to this chapter; violate any order issued pursuant to this chapter; or violate any provision of this chapter. (

13.26.040 POLLUTION PREVENTION REQUIREMENTS – REPEALED

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A.

F

Commented [MR25]: (Moved from the former Pollution Prevention Requirements 13.26.040 – removed redundancy covered in definitions)

Commented [MR26]: (Moved from the former Protection of Water Supplies Section 13.26.090), revised to include public water supplies that are not regulated by the PSC and rephrased to indicate "denial" instead of "approval of the connection")

Commented [MR27]: (New)

Commented [MR28]: (Section N was moved from the former Protection of Water Supplies Section 13.26.090)

Commented [MR29]: Moved from the former Prohibited Activity Section 13.26.080)

Commented [MR30]: (REVISED AND INCORPORATED into 13.26.32, 13.26.34 and the BMP manual

Commented [MR31]: (Moved to Prohibited Activities)

Commented [MR32]: (Removed – District does not administer this federal law)

Commented [MR34]: (Moved to Pollution Prevention Permit Section)

G.

H.

13.26.034 REGULATED SUBSTANCES AND POLLUTION PREVENTION– GENERAL REQUIREMENTS

A. A Person who owns or operates the following businesses, performs the following activities, or owns the property where the business or activities take place, including but not limited to:

- Auto Maintenance
- Bulk Petroleum Storage
- Carpet Cleaning
- Chlorinated Water Discharge
- Dry-Cleaning
- Fueling Facilities
- Livestock Housing
- Pressure Washing
- Restaurants and Food service
- Road Maintenance
- Vehicle washing
- Well development

must comply with minimum required Best Management Practices. Implementation of alternative BMPs that achieve the intent of minimum BMPs may be approved by the Department

B. A person who owns, operates or controls a Facility at which a Regulated Substance equal to or greater than the Threshold Quantity is handled must comply with the minimum required Best Management Practices and all provisions of this chapter. Implementation of alternative BMPs that achieve the intent of minimum BMPs may be approved by the Department.

A.C. A person who owns, operates or controls a Facility at which a Regulated Substance equal to or greater than the Threshold Quantity is handled shall clearly label the primary container with the name of the Regulated Substance and provide secondary containment for that substance. The minimum BMPs for secondary containment must be met. This rule does not apply to petroleum products in Underground Storage Tanks, vehicle fuel tanks, Large Capacity Petroleum Storage Tanks, and Regulated Substances sold for retail in a container equal to or less than 5 gallons capacity.

Commented [MR36]: (Revised and moved to Fueling Facilities Section)

Commented [MR37]: (Revised and moved to Prohibited Activities Section)

Commented [MR38]: (New. Since the adoption of the ordinance in the 1990s we have recognized a number of businesses and activities as potential pollution sources for the Missoula aquifer and surface waters (originally the ordinance focused primarily on fueling facilities, bulk petroleum storage and dry-cleaning facilities). It is important to include BMPs that prevent contamination from these activities)

Commented [MR39]: (New)

Commented [MR40]: (Moved from Pollution Prevention Section and added ref to BMPs and Large Capacity Petroleum Storage Tanks)

B.D. A person who owns, operates, or controls a New Facility at which a Regulated Substance equal to or greater than the Threshold Quantity is Handled must obtain Department approval of their plan for secondary containment prior to obtaining a building permit, business license or first handling a Regulated Substance in an amount equal to or greater than its Threshold Quantity, whichever occurs first. This rule does not apply to petroleum products in Underground Storage Tanks, vehicle fuel tanks, and Regulated Substances for retail sale in a container equal to or less than 5 gallons capacity.

Commented [MR41]: (Moved from Pollution Prevention Requirements)

E. A person who owns, operates or controls a Facility at which any Regulated Substance is Handled in an amount equal to or greater than four times its Threshold Quantity must have a current Pollution Prevention Permit from the Department and meet requirements of 13.26.050.

Commented [MR42]: (Moved from Pollution Prevention Permit Section)

F. Facilities in existence as of the original date of this code (Ord. 2906, 1994) that handle Regulated Substances in an amount equal to or greater than four times its Threshold Quantity within the Future Wellhead Reservation Area may continue to operate, subject to all the conditions of section 13.26.050 and the following:

1. Any Noncomplying Activity that is discontinued, abandoned or ceases for a period of twelve consecutive months may not be resumed.

2. A Noncomplying Activity may not be enlarged, expanded, or altered so as to substantially increase the risk of soil or groundwater contamination. Any enlargement, expansion or increase in a Noncomplying Activity must be approved by the Department, in writing, prior to activity commencement. (Moved from Pollution Prevention Section)

Commented [MR44]: (Moved to Protection of Water Supply Wells Section)

K.

Commented [MR45]: (Moved to Prohibitions)

L.

)

13.26.036 FUELING FACILITIES

A. Any New or Replacement Underground Storage Tank system at a Fueling Facility must be approved by the Department of Environmental Quality, if applicable, prior to obtaining a building permit.

Commented [MR48]: (NEW – Department believes DEQ standards are sufficient; coordinating their review makes sense).

B. Existing facilities have until December 30, 2024 to meet BMPs or receive approval for alternative BMPs. (

C.

13.26.038 – DEICER SPECIFICATIONS FOR PUBLIC ROADWAYS

A. Before any deicer is applied on streets and highways within the City of Missoula and all places within five miles outside the city limits, the product must be:

1.
. Approved by the Department, and;
. Approved by the Department, and;
.
Approved by the Department, and;

2.
Analytically tested to demonstrate that its quality meets the limits shown in Table 1. Analytical testing must be performed by the manufacturer or distributor at an independent certified laboratory using test methods approved by the Department.

3. All deicers may be subject to inspection and analysis as delivered.

Commented [MR51]: (REVISED. Former rule did not require approval explicitly and redundant sections were deleted)

Commented [MR52]: (REVISED. Language and enforcement capacity unclear)

Commented [MR53]: (MOVED. Formerly in FIELD DELIVERY section).

Table 1: Constituent Limit for deicers

Parameter	Limit (mg/kg) [1]
Arsenic	1.0
Barium	100
Cadmium	0.20
Chromium	0.50
Copper	0.20
Lead	1.0
Mercury	0.005
Selenium	5.0
Zinc	10.0
Total Cyanide	0.20
Total Phosphorus	2,000
Total Nitrogen	1,000 / 500 [2]
PH	6.0- 9.0
Pesticides/herbicides	Based on DEQ-7 Standard [3]

[1] Liquid products shall be analyzed in the concentration they are applied to the street and directly compared to Table 1. Solid products shall be liquefied at specifications approved by the ~~Department~~Department prior to analysis. In general products will be analyzed in accordance with product category test protocols developed by the Pacific Northwest Snowfighter's Association (PNS) before being compared to Table 1. In most cases, the limit is based on the Montana drinking water quality or acute aquatic life standard (DEQ-7 standards), whichever is lower. The limits for nitrogen and phosphorus are set ~~even~~ lower ~~because they are believed to be reasonably achievable~~. A 100 to 1 dilution factor is applied for most parameters. This factor accounts for the dilution and attenuation of deicer from the truck to the side of the road. It was determined by

comparing the chloride concentration of deicers to the chloride concentration of stormwater samples collected during runoff.

[2] The allowable amount of total nitrogen for a deicer is dependent on the form of nitrogen present in the deicer. Supplier must test for TKN, Nitrate + Nitrite as N, and Ammonia Nitrogen using methods approved by the Department. Organic nitrogen shall equal the amount of Total Kjeldahl Nitrogen (TKN) minus Ammonia Nitrogen. If 50% or more of the nitrogen present in the deicer is of the organic form, a limit of 1,000 mg/kg shall apply. If less than 50% of the nitrogen is of the organic form, a limit of 500 mg/kg shall apply.

[3] For a product that contains an agricultural by-product, the supplier shall test for any pesticide/herbicide possibly in the deicer using test methods approved by the Department. The limit will be based on DEQ-7 standard using a 100 to 1 dilution.

Commented [MR54]: (REMOVED.Establishing liability for suppliers is not necessary).

B. DEPARTMENT APPROVAL PROCESS

1. Persons seeking Department approval for applying a deicer on streets and highways within the City of Missoula and all places within five miles outside the city limits must submit a complete application to the Department on forms supplied by the Department. The complete application must include:
   a. (REMOVED. Covered by remainder of requirements)
   b. Independent certified laboratory analytical results of testing required in section (A) (2);
   c. Safety Data Sheet for the product;
   d. Proprietary chemical and physical information on the product, which shall be held confidential;
   e. Two one-liter samples of the product for Department quality control testing purposes; and
   f. Other relevant information that the Department may require which is obtainable by the applicant.

2. The Department shall notify the applicant within 30 days of receipt of a complete application
   The Department shall notify the applicant within 30 days of receipt of a complete application
   The
   Department shall notify the applicant within 30 days of receipt of a complete application whether the product is approved or denied.

Commented [MR55]: (REVISED for clarity)

3. Following approval, any changes to deicer constituent limits or product formulations must be
   Following approval, any
   changes to deicer constituent limits or product formulations must be reviewed and approved prior to use.)

Commented [MR56]: (REVISED for clarity

deicer

13.26.050 POLLUTION PREVENTION PERMIT REQUIREMENTS

Commented [MR59]: (REVISED for clarity (below). New sections are indicated)

A. A person who owns, operates, or controls a New or Replacement facility which will Handle a Regulated Substance in an amount equal to or greater than four times its Threshold Quantity shall obtain a Pollution Prevention Permit prior to obtaining a building permit, business license, constructing the Facility, or commencing operation. The Department may order revisions in the permit application submitted by the regulated Facility to be completed within 30 days of receipt of an administrative order issued pursuant to 13.26.120 of this chapter.

B. In order to obtain or modify a Pollution Prevention Permit, an application, accompanied by a Pollution Prevention Plan, must be submitted to the Department for approval. The Department shall supply a form that can be used for the plan. The Pollution Prevention Plan must contain the following:

1. A chemical inventory that includes the identity, state (i.e. solid, liquid, or gas), quantity, toxicity, storage location (submit building and site plans), and type of storage container for each Regulated Substance Handled in an amount equal to or greater Threshold Quantity at the Facility.

2. How Regulated Substances listed in (1) are:
   a. transported and used (including physical and/or operational procedures in place to meet secondary containment requirements of this chapter); and,
   b. treated, recycled, or disposed

3. A discussion of the risks to water quality posed by the Regulated Substances at the Facility including but not limited to:
   a. The direction of surface drainage, distance to surface water, and estimated depths to groundwater;
   b. Potential consequences of any release, including potential conduits to groundwater and surface water such as storm sewers, swales, sumps, irrigation ditches, etc.

4. Specific steps that mitigate risks in (3) including but not limited to:
   a. Personnel training;
   b. Engineering controls (including secondary containment, leak detection, etc.);
   c. Preventative maintenance and inspections;
   d. Procedures to prevent a release of a Regulated Substance during onsite transport, transfer, use, storage, or disposal;
   e. Employee and position responsible for oversight of spill prevention mechanisms;
   f. Implementation of the applicable minimum BMPs for the business type or component;
   g. Evaluation of pollution prevention strategies including:
      1. Regulated Substance volume reduction;
      2. Process alterations;
      3. Product substitution; and,
      4. Waste reuse, recycling, or treatment

5. An Emergency Response Plan containing:
   a. Identification and emergency contact information for personnel responsible for responding to an accidental release;
   b. The skill and knowledge of the person or position responsible for actions in the event of a release;
   c. Steps taken in response to a small or large release;
   d. Spill reporting protocols consistent with requirements of this local code, state, and federal laws based on the size of the release;

e. Protocols for maintaining sufficient absorbent materials and other emergency equipment available onsite to respond to small or large releases of a Regulated Substances;

f. Written procedures describing how such equipment will be inspected and maintained;

g. Any other procedures to control and remediate a release of any Regulated Substance.

C. If a Facility is required by State or Federal law (e.g. SPCC) to prepare a pollution prevention or release prevention plan, a copy of such plan, supplemented with such other information as required by this Section, shall suffice to meet the Pollution Prevention Plan requirement of this section.

D. For Facilities with Large Capacity Petroleum Storage Tanks, the Pollution Prevention Plan must be updated every five years and address the implementation of the following alternative technologies and measures:

1. installation of impermeable barriers or liners to prevent the vertical migration of released fuel to the Aquifer;
2. grading of the secondary containment area to common drainage channels or sumps equipped with dedicated pumps that can be activated to pump fuel from the containment area in the event of a large release;
3. installation of vapor monitoring devices at Piping Manifolds and valves to alert personnel of a release;
4. excavation of contaminated soils immediately after a release occurs.
5. The plan must be approved by the Department, and all physical or procedural changes required as a condition of the Department's approval of the plan, shall be completed or instituted within two years of the Department's approval;

E. Permitted facilities must follow the approved Pollution Prevention Plan

F. The Department shall issue a Pollution Prevention Permit within 30 days of determining that the applicant has submitted a complete permit application and the pollution prevention plan complies with the requirements of this code. The Department may include permit conditions necessary to prevent releases to surface water, groundwater and soil in accordance with13.26.032, 13.26.034, 13.26.036, 13.26.038 and applicable BMPs in the Best Management Practices manual.

G. Changes to a Facility's floorplan; wastewater system; stormwater management; regulated substance inventory; quantity; storage; use or disposal practices; emergency response plan; preventative maintenance practices; and training, must be pre-approved by the Department. Failure to obtain pre-approval is a violation of this chapter. Extensive changes require a modification request and application fee.

H. The applicant must pay an application fee in an amount determined by the Board prior to review and approval of a New or modified Pollution Prevention Permit application.

I. Department may require a Facility inspection to ensure compliance with the requirements of this chapter before a permit is issued.

J. The Pollution Prevention Permit shall be valid for two years. The applicant must apply for permit renewal at least 60 days prior to permit expiration.

K. A person who owns, operates or controls a permitted Facility must comply with all provisions of this section.

Commented [MR60]: (MOVED from BULK PETROLEUM section and edited for clarity)

Commented [MR61]: (NEW. Formerly facilities were only required to submit Pollution Prevention Plans for approval but not necessarily follow them, e.g. provide training, follow spill response protocols, attain emergency response materials, etc.)

Commented [MR62]: (NEW. Approval for pollution prevention strategies is specific to the type and quantities of chemicals and other specific facility details. Changes must be pre-approved to prevent threats to water quality)

13.26.060 REPEALED

13.26.070 REPORTING OF RELEASES

A. A person who owns, operates or controls a Facility or a person responsible for a release must immediately report a release of a Regulated Substance to the Missoula 9-1-1 center by telephone in the following cases:

1. A release of petroleum in an amount greater than twenty-five gallons or any amount that threatens surface water, groundwater, or enters a storm drain;

2. A release of a Regulated Substance other than petroleum in a quantity which exceeds the Threshold Quantity of this code

B. Exemption from the requirement to report a release is not intended to relieve, in whole or in part, a person's responsibility to remediate or eliminate contamination caused by a release, as may be required by this code or any other state, federal or local law or regulation.

13.26.080 REPEALED

13.26.090 PROTECTION OF WATER SUPPLY WELLS.

A. New water supply wells shall comply with the following:

1. New and replacement public and private water supply wells must be installed within design standards established by the Montana Administrative Rules, A.R.M. 17.38.101 through 17.38.513.

2. Wells of new community and non-community non-transient water systems may not be constructed:

a. Within 1000 feet of any Hazardous Waste Management facility, Class II landfill, Bulk Petroleum Storage facility, fuel pipeline, Fueling Facility not meeting the design standards of section 13.26.036 of this code, chemical manufacturing facility, regulated substance tank not meeting the requirements of section 13.26.036 of this code, and any site where a release to groundwater has been reported to a state or federal agency.

B. Within 250 feet of a Class III landfill, railroad track, the edge of pavement of the principal north-south or east-west hazardous substance transportation routes, or the subsurface discharge point of a public sewage disposal system.

C. ©Within 100 feet of a sewer lift station serving a publicly-owned or public sewage system, dry well, or wastewater absorption system, as defined in the Missoula City-County Health Board, Regulation No. 1.

(d) Within 50 feet of any sewer main or unlined irrigation ditch.

D. The siting requirements of subsection 13.26.090 (A)(2), may be waived by the Department if it is demonstrated to the Department through scientific

and technical evidence that the proposed location of a new well is the only practical site available and the potential for contamination to the well or groundwater is reduced by such other measures as the Department may require.

E. The siting requirements of subsection 13.26.090 (A) (2) shall not be considered by any state or federal agency to provide an institutional control which would protect public health from contaminants at a site described in subsections 13.26.090 (A) (2) (a)-(d) in order to justify a decision not to clean up contamination at such sites or to not take action to limit releases of contaminants from such sites which may affect the quality of groundwater or surface water that may affect the quality of water obtained through community or non-community non-transient public water systems located within the distances described in subsections 13.26.090 (A) (2) (a)-(d).

F. A person who owns, operates or controls a facility on which a public or private water well or monitoring well is abandoned after September 8, 1994 shall ensure that the well is abandoned in compliance with the Montana District of Natural Resources and Conservation Board of Water Well Contractor Regulations, ARM §36.21.669 through §36.21.670 and §36.21.810.

Commented [MR66]: (NEW)

13.26.091 HAZARDOUS SUBSTANCE TRANSPORT

A. U.S. Highway 93 and Interstate Highway 90 shall serve as the principal North-South and East-West Hazardous Waste transportation routes in the Missoula Valley. The City of Missoula must provide adequate signing to indicate location of the routes to persons who transport Hazardous Waste through the valley.

Commented [MR67]: (MOVED from 13.26.90 Protection of Water Supply Wells)

13.26.092 REVISIONS TO BEST MANAGEMENT PRACTICES

Prior to submittal to the Mayor for adoption pursuant to Missoula Municipal Code 2.03.020, the Board shall conduct a public meeting to review proposed changes to the Department's Best Management Practices for Pollution Prevention Manual.

©|||

13.26.100 REPEALED

Commented [MR74]: (The variance section utilized the board to perform variance proceedings similar to the Heath Code. This section was removed to more appropriately align the ordinance language with municipal code.)

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13.26.110 INSPECTIONS

A. The Department may enter and inspect at reasonable hours (or at any time on evidence of a release), upon presentation of credentials , all facilities within the aquifer protection area which it reasonably believes may handle regulated substances, in order to determine that the provisions of this chapter are being followed.

B. If a person with authority over a facility will not permit an inspection, the city attorney's office may apply to the city municipal court for a search warrant, based on probable cause to issue a warrant to inspect, survey or examine the facility and the premises on which it is located for potential violations of this chapter or in the interest of public health, safety and general welfare.

C. If a facility appears vacant or abandoned, and the property owner cannot be readily contacted to obtain consent for an inspection, in the interest of public health, safety and general welfare an agent of the city may enter any open or unsecured portion of the facility to conduct an inspection.

D. Agents of the city or Department shall show their identification when making an inspection.

E. Law enforcement officers shall assist in making inspections when the Department requests their assistance, when necessary to provide for safe access and entry to the facility and at such time that law enforcement assistance can be reasonably scheduled or when a clear hazard to public health, safety or welfare exists pursuant to MCA 50-2-120.

13.26.120 ENFORCEMENT

A. The Department and the Missoula City Attorney's office shall have the power and authority to administer and enforce the provisions of this code.

B. Whenever the Department has knowledge or evidence that a violation of this code has occurred, the Department may issue a Notice of Violation to be served personally, by certified mail, or by email with read-receipt on the alleged violator or its agent. This Notice of Violation shall specify:

1. The provision of this code or permit alleged to be violated;
2. The plain statement of facts that constitute the violation; and
3. Potential penalties for non-compliance

3.4. What needs to be done to come into compliance.

C. This notice may also include an order for corrective action, which shall specify as applicable:

1. The specific nature of corrective action that the Department requires, which may include without limitation:

   a. Investigation, sampling and analysis to confirm a release or contamination;
   b. Containment, removal and remedial action to abate and reduce contamination or the threat of contamination;
   c. The submission of a corrective action plan and corrective action progress reports or any other information deemed appropriate to protect human health and the environment; and

2. The time within which the corrective action is to be implemented.

3. If a person who owns, operates or controls the facility fails to comply with investigation or sampling required in an order issued pursuant to this section, the Department may conduct said investigation or sampling and the person so ordered shall be responsible for paying for Department staff time, analytical costs, and any incidental costs associated with the investigation and/or sampling. Failure of said person to pay the Department staff time or analytical costs shall be a violation of this code.

D. This order is final unless, five working days after the order is received, the offender submits a written request for an administrative review as provided for in Section (E), Upon good cause shown, the time frame for requesting a department administrative review may Upon good cause shown, the time frame for requesting a department administrative review may be extended if made within the time specified for compliance in the Notice of Violation and Order to Take Corrective Action. A request for administrative review does not stay the order.

Commented [MR75]: (Revised to add option for email delivery)

Commented [MR76]: (Moved from the Admin Review Section)

Commented [MR77]: (Updating language for municipal code enforcement consistency)

E. Administrative review.

1. Any person subject to a Department Notice of Violation and Order to Take Corrective Action may request an administrative review by the Health Officer, or in the case of Health Officer absence, his or her designee (Hearing Officer).
2. The Hearing Officer shall schedule an administrative review hearing within ten days of receipt of the request but can be scheduled beyond the 10 days by mutual consent of the Department and the person requesting the hearing.
   The Hearing
   Officer shall provide written or verbal notice of the date, time and location of the scheduled hearing to the person requesting the hearing.
3. At the administrative hearing the Hearing Officer shall first hear the staff report, , on the Notice of Violation and Order to Take Corrective Action. Second, the person who requested the hearing may present relevant information to the hearing officer. Third, the Hearing Officer may hear any person who has relevant information regarding the Notice of Violation and Order to Take Corrective Action.
4. The Hearing Officer may continue its administrative review for a reasonable time period following the administrative review hearing in order to obtain information necessary to make a decision

5. The Hearing Officer shall affirm, modify or revoke the Notice of Violation and Order to Take Corrective Action, in writing, following completion of the administrative review. The decision shall be final. A copy of this decision shall be sent by certified mail or delivered personally to the person who requested the administrative review.

Commented [MR78]: (Hearing may be scheduled more than 10 days after a request if mutually agreed upon. The date of compliance should not remove the ability to request a hearing) (This revision of the municipal code aligns with existing code and municipal authority. The admin review and board hearings are not appropriate and may be duplicative

13.26.130 CRIMINAL PENALTIES AND JUDICIAL ENFORCEMENT

A. Any person who violates any of the provisions of this chapter, or any order made pursuant to this chapter, shall be guilty of a misdemeanor and subject, upon conviction thereof, to a fine not to exceed $500 per day
. Each day a violation exists shall
constitute a separate offense.

B. Violations of this code, whether the violation occurs inside the city limits or within 5 miles of the city limits, are subject to the jurisdiction of the City of Missoula Municipal Court.

C. Action under this section shall not be a bar to enforcement of this chapter or orders made pursuant thereto, by injunction or other appropriate remedy. The department may institute and maintain any and all enforcement proceedings.

C.E. All fines collected shall be deposited in the city general fund.

D.F. Pollution prevention efforts made by the violator, the economic benefit of not complying with any section of this chapter and the gravity of the offense shall be considered in determining penalties of violations of this chapter.

E.G. The city may not enter into a vendor or construction contract, grant or loan with any person who has been convicted of an offense under this chapter. This prohibition shall:

1. Continue for a period of one year following the date of conviction, and more than one year if said person does not correct the conditions giving rise to the conviction; and

2. Affect each facility owned or operated by the person.

F.H. Notwithstanding any other provision of law, the municipal court may also order that the offender take action to enhance public health or the environment by restoring or otherwise improving the quality of the Missoula Valley Aquifer in a manner consistent with public health, safety and general welfare and these provisions of this chapter.

Commented [MR80]: (Moved to within 13.26.130 and language changed to match Missoula Municipal Code remove limitations of injunctive relief)

13.26.150 REPEALED.

Commented [MR81]: (RETAINED below. ADVISED that the severability section is common MMC language that does not require its own section title).

SEVERABILITY. If any section, subsection, sentence, clause, phrase or word of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code. The council hereby declares that it would have passed this code and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, for any reason this code should be declared invalid or unconstitutional, then the remaining code provisions will be in full force and effect.

First reading and preliminary adoption on the _____ day of _____, 2022, by a vote of __ ayes, _____ _____; __ Nays, _____; _____ Abstain, _____ _____; and __ Absent, _____

Second and final reading and on the _____ day of _____, 2022, by a vote of __ ayes, _____ _____; __ Nays, _____; _____ Abstain, _____ _____; and __ Absent, _____

This code shall have an effective date of September 1, 2022.

ATTEST:

Martha L. Rehbein, CMC
City Clerk

APPROVED:

John Engen
Mayor

Draft dated 5/3/2022
Ordinance

An ordinance generally amending Missoula Municipal Code Chapter 13.26 entitled "Missoula Valley Water Quality ordinance" to amend and update regulations necessary to protect Missoula's sole source aquifer.

Be it ordained that Chapter 13.26 Missoula Municipal Code is hereby amended as follows:

Chapter 13.26

MISSOULA VALLEY WATER QUALITY CODE

Sections:

13.26.010 SHORT TITLE--APPLICABILITY--AUTHORITY. This code shall be known as the "Missoula Valley Water Quality Code." It is intended to protect the public health, safety and general welfare of those who depend on the Missoula Valley Aquifer and surface waters in the Missoula Valley for drinking water, recreation and other beneficial uses. This health-related code is adopted by the Missoula City Council for enforcement inside the city limits. If both the County Commissioners and the local health board approve enforcement of this chapter extraterritorially within five (5) miles of the city limits, this chapter is thereafter enforceable outside the city limits within five (5) miles of the city limits that are within the boundary of the Missoula Valley Water Quality District, a local water quality protection district authorized by §7-13-4504 MCA . This code establishes prohibitions and restrictions to prevent surface water and groundwater contamination, and to protect public health, safety and welfare. This code shall be broadly construed to affect its purposes. Nothing in this code shall relieve a person from the requirements of any other federal, state, or local law. If there is a discrepancy between this code and a local, state or federal statue or regulation, the more stringent shall govern.

13.26.011 ADMINISTRATIVE RULES AUTHORIZED. The Department is authorized to develop Best Management Practices that implement, interpret, or prescribe city law or policy or describes city practice or procedure with respect to the subject matter found in Chapter 13.26 of the Missoula Municipal Code. Best Management Practices developed pursuant to this section must be adopted by the Mayor pursuant

to section **2.03.020**, Missoula Municipal Code to be enforceable within the city limits.. If both the Board of County Commissioners and the local health board approve the BMP manual, this manual is thereafter enforceable outside the city limits within five (5) miles of the city limits that are within the boundary of the Missoula Valley Water Quality District.

13.26.020 PURPOSE. In order to protect the Missoula valley's sole source of drinking water and surface waters and to secure and promote the general public health, safety and welfare, the Missoula City Council declares that:

A. The improper storage, handling, use, transport, production or disposal of certain substances in the Missoula Valley is potentially harmful to the quality of water in the Missoula Valley

B. Affirmative measures to prevent water pollution are the most effective means available to protect water quality.

C. Local authority is needed to require pollution prevention measures at facilities which handle significant quantities of certain substances, and to prohibit and deter activities which pose threats to the quality of the Missoula Valley Aquifer.

D. The construction, development and use of new public water supply system wells in proximity to existing sources of contamination is potentially harmful to the quality of drinking water obtained from such wells. The location of identified contaminant sources which pose serious threats of contamination will also be prohibited in proximity to public drinking water wells, in order to minimize the risk of contamination.

13.26.030 DEFINITIONS. For purposes of this code and associated Best Management Practices, the following terms have the following meanings unless the context clearly indicates otherwise:

Aboveground Storage Tank (AST) - A tank that is used to contain an accumulation of a Regulated Substance, and the volume of which is more than 90% above the surface of the ground.

Allowable Non-Stormwater Discharge - Any one of the water-generating activities listed in Missoula Municipal Code 13.27.200 (B).

Anti-Icing: The application of a deicer before or during a storm event for the purpose of preventing ice and snow accumulation on the roadway.

Aquifer - A water-bearing, subsurface formation capable of yielding sufficient quantities of water for beneficial use.

Aquifer Protection Area - The areas within the City of Missoula and within five miles outside the Missoula city limits which are within the boundaries of the Missoula Valley Water Quality District.

Best Management Practices (BMPs) – Control measures taken to mitigate potential contamination of soil, groundwater and surface water and described in detail in the Department's Best Management Practices for Pollution Prevention Manual. For businesses or activities for which local BMPs do not yet exist, national, regional, or appliable industry standard BMPs apply.

Board - The Missoula Valley Water Quality District Board.

Bulk Petroleum Storage - A facility used for storage of petroleum products for marketing or wholesale distribution that has a total bulk storage capacity of 50,000 gallons or more.

Carbon Absorption/Evaporation Technology: A treatment technology which removes chlorinated solvents from a water-solvent mixture .

Chemical Manufacturing Facility - A facility having a North American Industry Classification Code (NAICS Code) between 325180 and 325998 which handles Regulated Substances in an amount equal to or greater than threshold quantities.

Chlorinated Solvent – An organic solvent containing chlorine atoms within its molecular structure.

Class II Landfill - An area of land or an excavation, as defined in Montana Administrative Rules A.R.M. 17.50.504, where group II or group III wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile. Group II and III wastes are defined in Montana Administrative Rules, A.R.M. 17.50.503.

Class III Landfill - An area of land or an excavation, as defined in Montana Administrative Rules A.R.M. 17.50.504, where group III wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile. Group III wastes are defined in Montana Administrative Rules, A.R.M. 17.50.503.

Closure Permit - A permit issued by the Department in accordance with section 13.26.060 of this code when a facility is permanently closed or has been abandoned for one year.

Community Water System - Any public water supply system, as defined in A.R.M. 17.36.101, which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Component - Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function.

Containment Vault – A sealed tank that is limited to accepting and containing accidental spills. A tank that receives wastewater from a fixture is not a containment vault.

Contamination - The presence of any substance (chemical, radiological, or biological) or any condition (temperature, pH, taste, color, odor, turbidity) in soil or water which may create or threaten to create a hazard to human health or the environment, or impair the usefulness of the soil or water.

Deicer - A chemical substance used to melt ice or snow deposited on roads or other surfaces.Department – The Missoula City-County Health Department
District - The Missoula Valley Water Quality District

Dry Cleaning Establishment - Any facility that uses a transfer machine, dry-to-dry vented unit, or dry-to-dry closed loop unit that uses chlorinated solvents to clean textiles.

Dry Well - a USEPA-designated Class V stormwater injection well: a bored, drilled, or driven shaft or dug hole whose depth is greater than the opening width at the widest point, for the subsurface infiltration of stormwater.

Dry-to-Dry machine: A machine that washes and dries textiles without transferring them.

EPA - United States Environmental Protection Agency.

Facility - An area that includes the real property, building or buildings, and appurtenant structures, or any subset of the proceeding elements, used by a person.

Fleet - More than 5 vehicles or locomotives.

Fueling Facility - A facility that dispenses petroleum products for commercial sale, public use, or for fleet vehicle operation, excluding bulk petroleum storage facilities and farm and residential tanks of 1100 gallons or less capacity used for storing motor fuel for non-commercial purposes.

Fueling Pad – A concrete pad on which vehicles are refueled. Future Wellhead Reservation Area - The surface area overlying a portion of the Missoula Valley Aquifer which, because of aquifer recharge, groundwater flow and potential sources of contamination, should be protected against contamination to assure high quality groundwater for future drinking water source development. This area includes all land within township 13N, range 19W, sections 27 and 34, all land south of the Clark Fork River within township 13N, range 19W, section 22, and all land within the northwest and northeast quarter sections of township 13N, range 19W, section 34 of Montana Meridian, Missoula County, Missoula, Montana.

Groundwater - Water that fills the interconnected spaces of material below the water table (upper limit of saturation), or water which is held in the unsaturated zone by capillary action.

Handle - To use, generate, process, produce, package, treat, store, emit, discharge or dispose of a Regulated Substance, excluding (a) handling during continuous non-stop transit, (b) transit via pipeline, and (c) handling of parcels and packages by the United States Postal Service, motor freight companies, and private delivery services.

Hazardous Waste - A hazardous waste as defined pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261.

Hazardous Waste Management Facility - All contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of a hazardous waste, as defined in A.R.M 17.31.301 as a Major Hazardous Waste Management Facility. A Hazardous Waste Management Facility may consist of several treatment, storage, or disposal operational units.

Independent Certified Laboratory: A laboratory outside the control of the person requesting approval from the Department that is certified by the EPA or other appropriate certifying agency to complete testing.

Industrial or Commercial Injection Well - A well or septic system that receives industrial or commercial wastes from a public or private facility, excluding wells or septic systems used solely for stormwater discharge, sanitary waste discharge and/or discharge or extraction of non-contact heating and cooling system water.

Large Capacity Petroleum Storage Tanks - A tank greater than 50 feet tall or having diameter greater than 30 feet used for storage of petroleum products.

Missoula Valley Aquifer - The aquifer underlying the Missoula Valley which supplies the area with water.

New - Constructed, installed or brought into operation after after September 7, 1994.

Noncomplying Activity - An activity involving the handling of a Regulated Substance in an amount equal to or greater than its threshold quantity within a Future Wellhead Reservation Area.

Non-transient Non-community water system - Any public water supply system as defined in A.R.M. 17.38.202 that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.

Perchloroethylene (C_2CL_4) - A colorless liquid used as a dry-cleaning fluid; general degreaser of metals; solvent for waxes, fats, oils, and gums; constituent of printing inks and paint removers. Synonyms include: Tetrachloroethylene, Tetrachloroethene, PCE, PERC.

Person - Any person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer or any other entity whatsoever or any combination of such, jointly or severally.

Piping Manifold - The area(s) of a piping system fitted with apertures for making multiple connections.

Pollution Prevention Permit - A permit required of a person who owns, operates or controls a facility that handles any Regulated Substance in an amount equal to or greater than four times its threshold quantity. Pollution Prevention Permits are issued by the District in accordance with section 13.26.050 of this code.

Primary Container - A container which comes into immediate contact with a Regulated Substance.

Public Sewage Disposal System - A system, as defined in §75-6-102 MCA, for collection, transportation, treatment or disposal of sewage that is designed to serve or serves 15 or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.

Public Water Supply System - A system, as defined in §75-6-102 MCA, for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 15 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

Refrigerator Condenser: A vapor recovery system into which a chlorinated solvent vapor stream is routed and condensed to segregate the chlorinated solvent.

Regulated Substance - Any liquid substance, semi-liquid substance, or soluble solid on the most current Superfund Amendments and Reauthorization Act (SARA), Title III List of Lists published by the Office of Pollution Prevention and Toxic Substances, U.S. Environmental Protection Agency, Washington D.C., any petroleum product, any hazardous waste, or any other substance identified in this code..

Release - Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a Regulated Substance into the soil, groundwater or surface water (including the past release of a regulated substance), but excluding:

1. releases contained in a secondary containment area or the indoor workplace, provided the release does not exit the indoor workplace.
2. The use of pesticides as defined in §80-8-102(30) MCA when they are applied in accordance with approved federal and state labels, and any discharge permitted by a local, state, or federal agency.

Replacement - replacement or replace shall mean:

1. Replacing, repairing, upgrading or improving a facility at a cost which equals or exceeds 50% of the value of the facility at the time of such act.
2. Replacing a component or more than 50% of a component of a facility.
3. Reoccupation of a facility, reuse of a component at a facility, or restarting an activity which has been out of service or not practiced for a period of one year.

Secondary Containment – Containment to and external from the primary container adequate to prevent the release of Regulated Substances to native soil, surface water, or groundwater.

Soluble Solid - A solid that exists in a powder form and has a particle size less than 100 microns, is handled in solution or molten form, or meets the criteria for a National Fire Protection Association (NFPA) rating of 2, 3, or 4 for reactivity.

Stormwater - as defined in 13.27.030

Tank - Stationary device designed to contain an accumulation of substances and constructed of non-earthen materials (e.g. concrete, steel, plastic) that provide structural support.

Tank Fueling Area - The area surrounding underground storage tanks subject to releases of petroleum products during tank fueling, including the area surrounding the tanker truck during fueling.

Threshold Quantity - Quantities of Regulated Substances (excluding products in vehicle fuel tanks, aerosol spray cans, products used for research at educational institution laboratories, and substances sold for retail in a container equal to or less than 5 gallons capacity) handled at a facility at any one time, regardless of location, number of containers, or method of storage.

1. For those Regulated Substances specifically listed in the Superfund Amendments and Reauthorization Act (SARA) Title III List of Lists and for those Regulated Substances which are listed hazardous waste defined pursuant to 40 CFR Part 261, as amended, the threshold quantity shall be the reportable quantity published in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 40 CFR 302, Table 302.4 or the Superfund Amendments and Reauthorization Act (SARA) Section 355, Appendix A.

2. For those Regulated Substances that are characteristic hazardous wastes defined pursuant to 40 CFR Part 261, as amended, the threshold quantity shall be based on the substance contained in the waste with the lowest threshold quantity.

3. For those Regulated Substances not listed in the Superfund Amendments and Reauthorization Act Title III List of Lists, and for those Regulated Substances that are not a hazardous waste, the following quantities of qualifying substances at a facility at any one time shall constitute a Threshold Quantity:

    a. Gasoline - 250 pounds or 25 gallons
    b. Diesel/Jet Fuel/Kerosene - 500 pounds or 50 gallons
    c. Used Motor Oil/Hydraulic Oil/Transmission Fluid - 1000 pounds or 100 gallons.
    d. Unused Motor Oil/Hydraulic Oil/Transmission Fluid - 2,000 pounds or 200 gallons
    e. Deicer – 1000 gallons or 10,000 pounds (New)

4. For those substances that are mixtures of one or more regulated substance, the threshold quantity shall be based on the amount of the substance contained in the mixture with the lowest threshold quantity. If the proportions of regulated substances in the mixture are unable to be determined, the threshold quantity of the component in the mixture with the lowest threshold quantity will apply to the entire quantity (volume or weight) of the mixture.

Transfer Dry Cleaning Machine: A machine unable to both wash and dry garments, which emits chlorinated solvent to the atmosphere during transfer.

Underground Storage Tank (UST) - Any one or combination of tanks as defined in MCA 75-11-503.

Used Oil - Oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

Vegetated Swale - A vegetative-lined infiltration cell designed and constructed to collect and treat contaminants in stormwater runoff.

Vehicle Fueling Area - The area surrounding a fuel island or dispenser(s) subject to releases of petroleum products during vehicle fueling, including a 3-foot release collection buffer zone extending beyond the lanes of traffic next to the fuel islands or dispenser(s).

Well - A structure, pit or hole sunk into the earth to reach a resource supply such as water.

Wellhead - The physical structure or device at the land surface surrounding a well, from or through which groundwater flows or is pumped from an aquifer.

13.26.032 PROHIBITED ACTIVITIES

It is unlawful for any person to:

A. Cause contamination or to place, cause to be placed, or allow to remain in place any substance in a location where it is likely to cause contamination of soil, groundwater or surface water;

B. Distribute, sell, offer, or expose for sale products within the Aquifer Protection Area containing Perchloroethylene in any quantity. Those products containing Perchloroethylene used at dry cleaning establishments are exempt from this provision, provided the person who owns, operates, or controls such Facility obtains a Pollution Prevention Permit from the Department and complies with provisions of 13.26.050 and applicable BMPs

C. Discharge anything that does not meet the definition of stormwater or an Allowable Non-Stormwater Discharge to a municipal separate storm sewer system.

D. Discharge stormwater from Tank Fueling Areas directly to storm drains (dry sumps or inlets piped to outfalls)

E. Discharge stormwater from Vehicle Fueling Areas to storm drains (dry sumps or inlets piped to outfalls).

F. Construct or operate an Industrial or Commercial Injection Well.

G. Construct or operate a new or Replacement Facility which handles a Regulated Substance in a quantity equal to or greater than its Threshold Quantity within the Future Wellhead Reservation Area.

H. Install a new private drinking water supply well if the primary structure is within 200 feet of a water main which is part of an existing Public Water Supply System regulated by the Montana Public Service Commission, or which is owned or operated by the City of Missoula, Missoula County, or any consolidated city and county water or sewer district as defined in Title 7, chapter 13, parts 22 and 23, and the property abuts the right-of-way in which the main is located, unless the owner of the existing Public Water Supply System denies connection.

   After January 1, 2023, connect any structure to a well if the structure is within 200 feet of an existing Public Water Supply System.

I. Construct or operate a new:

   1. Hazardous Waste Management Facility, Class II Landfill, Large Capacity Petroleum Storage Tank, Chemical Manufacturing Facility, fuel pipeline, Fueling Facility not meeting design standard BMPs, or a Regulated Substance tank not meeting the requirements of section 13.26.036 of the Missoula Municipal Code (Awithin 1000 feet of a Community or Non-Transient Non-Community Water Supply System.

   2. Class III Landfill, railroad track, or the discharge point of a Public Sewage Disposal System within 250 feet of a Community or Non-Transient Non-Community Water Supply System.

J. Violate any provision set forth in a permit issued pursuant to this chapter; violate any order issued pursuant to this chapter; or violate any provision of this chapter. (

13.26.040 POLLUTION PREVENTION REQUIREMENTS – REPEALED

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13.26.034 REGULATED SUBSTANCES AND POLLUTION PREVENTION– GENERAL REQUIREMENTS

A. A Person who owns or operates the following businesses, performs the following activities, or owns the property where the business or activities take place, including but not limited to:

- Auto Maintenance
- Bulk Petroleum Storage
- Carpet Cleaning
- Chlorinated Water Discharge
- Dry-Cleaning
- Fueling Facilities
- Livestock Housing
- Pressure Washing
- Restaurants and Food service
- Road Maintenance
- Vehicle washing
- Well development

must comply with minimum required Best Management Practices. Implementation of alternative BMPs that achieve the intent of minimum BMPs may be approved by the Department

B. A person who owns, operates or controls a Facility at which a Regulated Substance equal to or greater than the Threshold Quantity is handled must comply with the minimum required Best Management Practices and all provisions of this chapter. Implementation of alternative BMPs that achieve the intent of minimum BMPs may be approved by the Department.

C. A person who owns, operates or controls a Facility at which a Regulated Substance equal to or greater than the Threshold Quantity is handled shall clearly label the primary container with the name of the Regulated Substance and provide secondary containment for that substance. The minimum BMPs for secondary containment must be met. This rule does not apply to petroleum products in Underground Storage Tanks, vehicle fuel tanks, Large Capacity Petroleum Storage Tanks, and Regulated Substances sold for retail in a container equal to or less than 5 gallons capacity.

D. A person who owns, operates, or controls a New Facility at which a Regulated Substance equal to or greater than the Threshold Quantity is Handled must obtain Department approval of their plan for secondary containment prior to obtaining a building permit, business license or first

handling a Regulated Substance in an amount equal to or greater than its Threshold Quantity, whichever occurs first. This rule does not apply to petroleum products in Underground Storage Tanks, vehicle fuel tanks, and Regulated Substances for retail sale in a container equal to or less than 5 gallons capacity.

E. A person who owns, operates or controls a Facility at which any Regulated Substance is Handled in an amount equal to or greater than four times its Threshold Quantity must have a current Pollution Prevention Permit from the Department and meet requirements of 13.26.050.

F. Facilities in existence as of the original date of this code (Ord. 2906, 1994) that handle Regulated Substances in an amount equal to or greater than four times its Threshold Quantity within the Future Wellhead Reservation Area may continue to operate, subject to all the conditions of section 13.26.050 and the following:

1. Any Noncomplying Activity that is discontinued, abandoned or ceases for a period of twelve consecutive months may not be resumed.

2. A Noncomplying Activity may not be enlarged, expanded, or altered so as to substantially increase the risk of soil or groundwater contamination. Any enlargement, expansion or increase in a Noncomplying Activity must be approved by the Department, in writing, prior to activity commencement. (Moved from Pollution Prevention Section)

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13.26.036 FUELING FACILITIES

A. Any New or Replacement Underground Storage Tank system at a Fueling Facility must be approved by the Department of Environmental Quality, if applicable, prior to obtaining a building permit.

B. Existing facilities have until December 30, 2024 to meet BMPs or receive approval for alternative BMPs. (

C.

13.26.038 – DEICER SPECIFICATIONS FOR PUBLIC ROADWAYS

A. Before any deicer is applied on streets and highways within the City of Missoula and all places within five miles outside the city limits, the product must be:
1. . Approved by the Department, and;

2. Analytically tested to demonstrate that its quality meets the limits shown in Table 1. Analytical testing must be performed by the manufacturer or distributor at an independent certified laboratory using test methods approved by the Department.

3. All deicers may be subject to inspection and analysis as delivered.

Table 1: Constituent Limit for deicers

Parameter	Limit (mg/kg) [1]
Arsenic	1.0
Barium	100
Cadmium	0.20
Chromium	0.50
Copper	0.20
Lead	1.0
Mercury	0.005
Selenium	5.0
Zinc	10.0
Total Cyanide	0.20
Total Phosphorus	2,000
Total Nitrogen	1,000 / 500 [2]
PH	6.0- 9.0
Pesticides/herbicides	Based on DEQ-7 Standard [3]

[1] Liquid products shall be analyzed in the concentration they are applied to the street and directly compared to Table 1. Solid products shall be liquefied at specifications approved by the Department prior to analysis. In general products will be analyzed in accordance with product category test protocols developed by the Pacific Northwest Snowfighter's Association (PNS) before being compared to Table 1. In most cases, the limit is based on the Montana drinking water quality or acute aquatic life standard (DEQ-7 standards), whichever is lower. The limits for nitrogen and phosphorus are set lower. A 100 to 1 dilution factor is applied for most parameters. This factor accounts for the dilution and attenuation of deicer from the truck to the side of the road. It was determined by comparing the chloride concentration of deicers to the chloride concentration of stormwater samples collected during runoff.

[2] The allowable amount of total nitrogen for a deicer is dependent on the form of nitrogen present in the deicer. Supplier must test for TKN, Nitrate + Nitrite as N, and Ammonia Nitrogen using methods approved by the Department. Organic nitrogen shall equal the amount of Total Kjeldahl Nitrogen (TKN) minus Ammonia Nitrogen. If 50% or more of the nitrogen present in the deicer is of the organic form, a limit of 1,000 mg/kg shall apply. If less than 50% of the nitrogen is of the organic form, a limit of 500 mg/kg shall apply.

[3] For a product that contains an agricultural by-product, the supplier shall test for any pesticide/herbicide possibly in the deicer using test methods approved by the Department. The limit will be based on DEQ-7 standard using a 100 to 1 dilution.

B. DEPARTMENT APPROVAL PROCESS

1. Persons seeking Department approval for applying a deicer on streets and highways within the City of Missoula and all places within five miles outside the city limits must submit a complete application to the Department on forms supplied by the Department. The complete application must include:
    a. (REMOVED. Covered by remainder of requirements)Documentation of Pacific Northwest Snowfighter's Association (PNS) product approval;
    b. Independent certified laboratory analytical results of testing required in section (A) (2);

c. Safety Data Sheet for the product;
d. Proprietary chemical and physical information on the product, which shall be held confidential;
e. Two one-liter samples of the product for Department quality control testing purposes; and
f. Other relevant information that the Department may require which is obtainable by the applicant.

2. The Department shall notify the applicant within 30 days of receipt of a complete application whether the product is approved or denied.
3. Following approval, any changes to deicer constituent limits or product formulations must be reviewed and approved prior to use.)

deicer

13.26.050 POLLUTION PREVENTION PERMIT REQUIREMENTS

A. A person who owns, operates, or controls a New or Replacement facility which will Handle a Regulated Substance in an amount equal to or greater than four times its Threshold Quantity shall obtain a Pollution Prevention Permit prior to obtaining a building permit, business license, constructing the Facility, or commencing operation. The Department may order revisions in the permit application submitted by the regulated Facility to be completed within 30 days of receipt of an administrative order issued pursuant to 13.26.120 of this chapter.

B. In order to obtain or modify a Pollution Prevention Permit, an application, accompanied by a Pollution Prevention Plan, must be submitted to the Department for approval. The Department shall supply a form that can be used for the plan. The Pollution Prevention Plan must contain the following:

1. A chemical inventory that includes the identity, state (i.e. solid, liquid, or gas), quantity, toxicity, storage location (submit building and site plans), and type of storage container for each Regulated Substance Handled in an amount equal to or greater Threshold Quantity at the Facility.

2. How Regulated Substances listed in (1) are:
   a. transported and used (including physical and/or operational procedures in place to meet secondary containment requirements of this chapter); and,
   b. treated, recycled, or disposed

3. A discussion of the risks to water quality posed by the Regulated Substances at the Facility including but not limited to:
   a. The direction of surface drainage, distance to surface water, and estimated depths to groundwater;
   b. Potential consequences of any release, including potential conduits to groundwater and surface water such as storm sewers, swales, sumps, irrigation ditches, etc.

4. Specific steps that mitigate risks in (3) including but not limited to:
   a. Personnel training;
   b. Engineering controls (including secondary containment, leak detection, etc.);
   c. Preventative maintenance and inspections;

d. Procedures to prevent a release of a Regulated Substance during onsite transport, transfer, use, storage, or disposal;
e. Employee and position responsible for oversight of spill prevention mechanisms;
f. Implementation of the applicable minimum BMPs for the business type or component;
g. Evaluation of pollution prevention strategies including:
    1. Regulated Substance volume reduction;
    2. Process alterations;
    3. Product substitution; and,
    4. Waste reuse, recycling, or treatment

5. An Emergency Response Plan containing:
    a. Identification and emergency contact information for personnel responsible for responding to an accidental release;
    b. The skill and knowledge of the person or position responsible for actions in the event of a release;
    c. Steps taken in response to a small or large release;
    d. Spill reporting protocols consistent with requirements of this local code, state, and federal laws based on the size of the release;
    e. Protocols for maintaining sufficient absorbent materials and other emergency equipment available onsite to respond to small or large releases of a Regulated Substances;
    f. Written procedures describing how such equipment will be inspected and maintained;
    g. Any other procedures to control and remediate a release of any Regulated Substance.

C. If a Facility is required by State or Federal law (e.g. SPCC) to prepare a pollution prevention or release prevention plan, a copy of such plan, supplemented with such other information as required by this Section, shall suffice to meet the Pollution Prevention Plan requirement of this section.

D. For Facilities with Large Capacity Petroleum Storage Tanks, the Pollution Prevention Plan must be updated every five years and address the implementation of the following alternative technologies and measures:
1. installation of impermeable barriers or liners to prevent the vertical migration of released fuel to the Aquifer;
2. grading of the secondary containment area to common drainage channels or sumps equipped with dedicated pumps that can be activated to pump fuel from the containment area in the event of a large release;
3. installation of vapor monitoring devices at Piping Manifolds and valves to alert personnel of a release;
4. excavation of contaminated soils immediately after a release occurs.
5. The plan must be approved by the Department, and all physical or procedural changes required as a condition of the Department's approval of the plan, shall be completed or instituted within two years of the Department's approval;

E. Permitted facilities must follow the approved Pollution Prevention Plan

F. The Department shall issue a Pollution Prevention Permit within 30 days of determining that the applicant has submitted a complete permit application and the pollution prevention plan complies with the requirements of this code. The Department may include permit conditions necessary to prevent releases to surface water, groundwater and soil in accordance with13.26.032, 13.26.034, 13.26.036, 13.26.038 and applicable BMPs in the Best Management Practices manual.

G. Changes to a Facility's floorplan; wastewater system; stormwater management; regulated substance inventory; quantity; storage; use or disposal practices; emergency response plan; preventative maintenance practices; and training, must be pre-approved by the Department. Failure to obtain pre-approval is a violation of this chapter. Extensive changes require a modification request and application fee.

H. The applicant must pay an application fee in an amount determined by the Board prior to review and approval of a New or modified Pollution Prevention Permit application.

I. Department may require a Facility inspection to ensure compliance with the requirements of this chapter before a permit is issued.

J. The Pollution Prevention Permit shall be valid for two years. The applicant must apply for permit renewal at least 60 days prior to permit expiration.

K. A person who owns, operates or controls a permitted Facility must comply with all provisions of this section.

13.26.060 REPEALED

13.26.070 REPORTING OF RELEASES

A. A person who owns, operates or controls a Facility or a person responsible for a release must immediately report a release of a Regulated Substance to the Missoula 9-1-1 center by telephone in the following cases:

1. A release of petroleum in an amount greater than twenty-five gallons or any amount that threatens surface water, groundwater, or enters a storm drain;

2. A release of a Regulated Substance other than petroleum in a quantity which exceeds the Threshold Quantity of this code

B. Exemption from the requirement to report a release is not intended to relieve, in whole or in part, a person's responsibility to remediate or eliminate contamination caused by a release, as may be required by this code or any other state, federal or local law or regulation.

13.26.080 REPEALED

13.26.090 PROTECTION OF WATER SUPPLY WELLS.

A. New water supply wells shall comply with the following:

1. New and replacement public and private water supply wells must be installed within design standards established by the Montana Administrative Rules, A.R.M. 17.38.101 through 17.38.513.

2. Wells of new community and non-community non-transient water systems may not be constructed:

a. Within 1000 feet of any Hazardous Waste Management facility, Class II landfill, Bulk Petroleum Storage facility, fuel pipeline, Fueling Facility not meeting the design standards of section 13.26.036 of this code, chemical manufacturing facility, regulated substance tank not meeting the requirements of section 13.26.036 of this code, and any site where a release to groundwater has been reported to a state or federal agency.

B. Within 250 feet of a Class III landfill, railroad track, the edge of pavement of the principal north-south or east-west hazardous substance transportation routes, or the subsurface discharge point of a public sewage disposal system.

C. ©Within 100 feet of a sewer lift station serving a publicly-owned or public sewage system, dry well, or wastewater absorption system, as defined in the Missoula City-County Health Board, Regulation No. 1.

(d) Within 50 feet of any sewer main or unlined irrigation ditch.

D. The siting requirements of subsection 13.26.090 (A)(2), may be waived by the Department if it is demonstrated to the Department through scientific and technical evidence that the proposed location of a new well is the only practical site available and the potential for contamination to the well or groundwater is reduced by such other measures as the Department may require.

E. The siting requirements of subsection 13.26.090 (A) (2) shall not be considered by any state or federal agency to provide an institutional control which would protect public health from contaminants at a site described in subsections 13.26.090 (A) (2) (a)-(d) in order to justify a decision not to clean up contamination at such sites or to not take action to limit releases of contaminants from such sites which may affect the quality of groundwater or surface water that may affect the quality of water obtained through community or non-community non-transient public water systems located within the distances described in subsections 13.26.090 (A) (2) (a)-(d).

F. A person who owns, operates or controls a facility on which a public or private water well or monitoring well is abandoned after September 8, 1994 shall ensure that the well is abandoned in compliance with the Montana District of Natural Resources and Conservation Board of Water Well Contractor Regulations, ARM §36.21.669 through §36.21.670 and §36.21.810.

13.26.091 HAZARDOUS SUBSTANCE TRANSPORT

A. U.S. Highway 93 and Interstate Highway 90 shall serve as the principal North-South and East-West Hazardous Waste transportation routes in the Missoula Valley. The City of Missoula must provide adequate signing to indicate location of the routes to persons who transport Hazardous Waste through the valley.

13.26.092 REVISIONS TO BEST MANAGEMENT PRACTICES

Prior to submittal to the Mayor for adoption pursuant to Missoula Municipal Code 2.03.020, the Board shall conduct a public meeting to review proposed changes to the Department's Best Management Practices for Pollution Prevention Manual.

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13.26.100 REPEALED

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13.26.110 INSPECTIONS

A. The Department may enter and inspect at reasonable hours (or at any time on evidence of a release), upon presentation of credentials , all facilities within the aquifer protection area which it reasonably believes may handle regulated substances, in order to determine that the provisions of this chapter are being followed.

B. If a person with authority over a facility will not permit an inspection, the city attorney's office may apply to the city municipal court for a search warrant, based on probable cause to issue a warrant to inspect, survey or examine the facility and the premises on which it is located for potential violations of this chapter or in the interest of public health, safety and general welfare.

C. If a facility appears vacant or abandoned, and the property owner cannot be readily contacted to obtain consent for an inspection, in the interest of public health, safety and general welfare an agent of the city may enter any open or unsecured portion of the facility to conduct an inspection.

D. Agents of the city or Department shall show their identification when making an inspection.

E. Law enforcement officers shall assist in making inspections when the Department requests their assistance, when necessary to provide for safe access and entry to the facility and at such time that law enforcement assistance can be reasonably scheduled or when a clear hazard to public health, safety or welfare exists pursuant to MCA 50-2-120.

13.26.120 ENFORCEMENT

A. The Department and the Missoula City Attorney's office shall have the power and authority to administer and enforce the provisions of this code.

B. Whenever the Department has knowledge or evidence that a violation of this code has occurred, the Department may issue a Notice of Violation to be served personally, by certified mail, or by email with read-receipt on the alleged violator or its agent. This Notice of Violation shall specify:

1. The provision of this code or permit alleged to be violated;
2. The plain statement of facts that constitute the violation; and
3. Potential penalties for non-compliance
4. What needs to be done to come into compliance.

C. This notice may also include an order for corrective action, which shall specify as applicable:

1. The specific nature of corrective action that the Department requires, which may include without limitation:

    a. Investigation, sampling and analysis to confirm a release or contamination;
    b. Containment, removal and remedial action to abate and reduce contamination or the threat of contamination;
    c. The submission of a corrective action plan and corrective action progress reports or any other information deemed appropriate to protect human health and the environment; and

2. The time within which the corrective action is to be implemented.

3. If a person who owns, operates or controls the facility fails to comply with investigation or sampling required in an order issued pursuant to this section, the Department may conduct said investigation or sampling and the person so ordered shall be responsible for

paying for Department staff time, analytical costs, and any incidental costs associated with the investigation and/or sampling. Failure of said person to pay the Department staff time or analytical costs shall be a violation of this code.

D. This order is final unless, five working days after the order is received, the offender submits a written request for an administrative review as provided for in Section (E), Upon good cause shown, the time frame for requesting a department administrative review may be extended if made within the time specified for compliance in the Notice of Violation and Order to Take Corrective Action. A request for administrative review does not stay the order.

E. Administrative review.

1. Any person subject to a Department Notice of Violation and Order to Take Corrective Action may request an administrative review by the Health Officer, or in the case of Health Officer absence, his or her designee (Hearing Officer).
2. The Hearing Officer shall schedule an administrative review hearing within ten days of receipt of the request but can be scheduled beyond the 10 days by mutual consent of the Department and the person requesting the hearing. The Hearing Officer shall provide written or verbal notice of the date, time and location of the scheduled hearing to the person requesting the hearing.
3. At the administrative hearing the Hearing Officer shall first hear the staff report, , on the Notice of Violation and Order to Take Corrective Action. Second, the person who requested the hearing may present relevant information to the hearing officer. Third, the Hearing Officer may hear any person who has relevant information regarding the Notice of Violation and Order to Take Corrective Action.
4. The Hearing Officer may continue its administrative review for a reasonable time period following the administrative review hearing in order to obtain information necessary to make a decision
5. The Hearing Officer shall affirm, modify or revoke the Notice of Violation and Order to Take Corrective Action, in writing, following completion of the administrative review. The decision shall be final. A copy of this decision shall be sent by certified mail or delivered personally to the person who requested the administrative review.

13.26.130 CRIMINAL PENALTIES AND JUDICIAL ENFORCEMENT

A. Any person who violates any of the provisions of this chapter, or any order made pursuant to this chapter, shall be guilty of a misdemeanor and subject, upon conviction thereof, to a fine not to exceed $500 per day. Each day a violation exists shall constitute a separate offense.

B. Violations of this code, whether the violation occurs inside the city limits or within 5 miles of the city limits, are subject to the jurisdiction of the City of Missoula Municipal Court.

C. Action under this section shall not be a bar to enforcement of this chapter or orders made pursuant thereto, by injunction or other appropriate remedy.The department may institute and maintain any and all enforcement proceedings.

E. All fines collected shall be deposited in the city general fund.

F. Pollution prevention efforts made by the violator, the economic benefit of not complying with any section of this chapter and the gravity of the offense shall be considered in determining penalties of violations of this chapter.

G. The city may not enter into a vendor or construction contract, grant or loan with any person who has been convicted of an offense under this chapter. This prohibition shall:

1. Continue for a period of one year following the date of conviction, and more than one year if said person does not correct the conditions giving rise to the conviction; and

2. Affect each facility owned or operated by the person.

H. Notwithstanding any other provision of law, the municipal court may also order that the offender take action to enhance public health or the environment by restoring or otherwise improving the quality of the Missoula Valley Aquifer in a manner consistent with public health, safety and general welfare and these provisions of this chapter.

13.26.150 REPEALED.

SEVERABILITY. If any section, subsection, sentence, clause, phrase or word of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code. The council hereby declares that it would have passed this code and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, for any reason this code should be declared invalid or unconstitutional, then the remaining code provisions will be in full force and effect.

First reading and preliminary adoption on the _____ day of _____, 2022, by a vote of __ ayes, _____ _____; __ Nays, _____; _____ Abstain, _____ _____; and __ Absent, _____

Second and final reading and on the _____ day of _____, 2022, by a vote of __ ayes, _____ _____; __ Nays, _____; _____ Abstain, _____ _____; and __ Absent, _____

This code shall have an effective date of September 1, 2022.

ATTEST: APPROVED:

_____ _____

Martha L. Rehbein, CMC
City Clerk

John Engen
Mayor

City of Missoula, Montana
City Council Committee Agenda item

Committee:	**Public Safety, Health and Operations**
Item:	**Resolution to support changes to the Missoula City-County Air Pollution Control Program rules**
Date:	May 4, 2022
Sponsor(s):	**Amber Sherrill**
Prepared by:	Benjamin Schmidt, R.S., Air Quality Specialist

Ward(s) Affected:

☐ Ward 1	☐ Ward 4
☐ Ward 2	☐ Ward 5
☐ Ward 3	☐ Ward 6
☒ All Wards	☐ N/A

Action Required:
Consider the resolution to support revisions to the Missoula City-County Air Pollution Control Program

Timeline and Recommended Motions:

Committee discussion:	5/11/2022
Council sets public hearing:	5/16/2022
Recommended motion:	Set a public hearing on June 6, 2022, on a resolution to support revisions to the Missoula City-County Air Pollution Control Program
Public Hearing:	6/6/2022
Final Consideration:	6/13/2022
Recommended motion:	Adopt a resolution to support revisions to the Missoula City-County Air Pollution Control Program
Deadline:	n/a

Background and Alternatives Explored:
On April 21, 2022, the Air Pollution Control Board approved several changes to the Missoula City-County Air Pollution Control Program rules. The purpose of the proposed rule changes is to improve air quality and ensure that national ambient air quality standards are met in Missoula County.

Many proposed changes correct spelling errors, correct reference errors, make changes to align local program rules with state and federal rules, or are edits for clarification. Substantive changes include restricting recreational fires during air alerts (Chapter 4), allowing conditional outdoor burning permits in the Missoula Air Stagnation Zone with approved technology (Chapter 7), discontinuing the gasoline oxygenated fuel program in the event Missoula receives authorization to cease the program (Chapter 10), and specifying that a person has 15 days to request a hearing if they disagree with an administrative review decision (Chapter 14).

Proposed changes to Chapter 9 update the wood stove rules to align with national standards, add additional installation requirements to the Seeley Lake area, and require the removal of all wood stoves and wood stove inserts upon transfer of ownership in the Missoula Air Stagnation.

The Missoula City-County Air Pollution Control Board is responsible for approving changes to the Missoula City-County Air Pollution Control Program. And then, by Montana law, the City Council and County Commissioners have a chance to approve or veto the revisions by resolution at a public meeting. Once the City Council and Commissioners approve the revisions, they are submitted to the Montana Department of Environmental Quality (DEQ) for approval. Once approved by the DEQ, the rules go into effect. Some of the rules are then submitted to the US EPA for inclusion into the State Implementation Plan (SIP), which is the federally enforceable plan of how Missoula will maintain particulate matter levels below the federal ambient air standards.

Financial Implications:
None

Links to external websites:
Air Quality Public Notices
https://www.missoulacounty.us/government/health/health-department/home-environment/air-quality/air-quality-public-notices

RESOLUTION NUMBER
Draft dated:
5/4/2022~~__/__/__~~

A resolution of the ~~missoula~~Missoula city council to support new ~~missoula~~Missoula city-county air pollution control program rules.

WHEREAS, the Missoula City-County Air Pollution Control Program Rules need to be updated to coordinate with rule changes by the State of Montana and rule changes at the federal level; and

WHEREAS, the Missoula City-County Air Pollution Control Program Rules need to be updated to modernize the language, fix grammar errors, correct reference errors, and clarify rule language; and

WHEREAS, wood combustion is the largest source of $PM_{2.5}$ air pollution when high $PM_{2.5}$ levels are present; and

WHEREAS, changes to Chapter 7 Outdoor Burning and Chapter 9 Solid Fuel Burning Devices are designed to improve outdoor burning practices and to minimize smoke impacts from outdoor burning and residential wood stoves; and

WHEREAS, the Missoula City-County Air Pollution Control Board proposed revisions to the Missoula City-County Air Pollution Control Program Chapters 2, 3, 4, 5, 6, 7, 8, 9, 10, 13 and 14, and after due notice, conducted public hearings on February 20, 2020 and April 21, 2022 and approved and passed those revisions at a public meeting on April 21, 2022; and

WHEREAS, the proposed revisions of the Missoula City-County Air Pollution Control Program have been submitted to the Missoula City Council by the Missoula City-County Air Pollution Control Board for this Councils approval; and

WHEREAS, the Missoula City Council held a public hearing on June 6, 2022 ~~to~~ consider the revisions of the Missoula City-County Air Pollution Control Program;

NOW THEREFORE BE IT RESOLVED that the City Council approves and adopts the revised Missoula Air Pollution Control Program Chapter 2 Definitions, Chapter 3 Failure to Attain Standards, Chapter 4 Missoula County Air Stagnation and Emergency Episode Avoidance Plan, Chapter 5 General Provisions, Chapter 6 Standards For Stationary Sources, Chapter 7 Outdoor Burning, Chapter 8 Fugitive Particulates, Chapter 9 Solid Fuel Burning Devices, Chapter 10 Fuels, Chapter 13 Variances and Chapter 14 Enforcement and Administrative Procedures which are attached hereto and by this reference incorporated herein

as part of this Resolution, to be effective upon approval by the Montana Department of Environmental Quality.

PASSED AND ADOPTED this ___ day of _____, 2022.

ATTEST:

_____
Martha L. Rehbein
City Clerk

APPROVED:

_____
John Engen
Mayor

(SEAL)

Proposed Changes to the Missoula City-County Air Pollution Control Program
April 21, 2022

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List of Appendices

List of Attachments

List of Acronyms

~~**AASHTO** – American Association of State and Highway Transportation Officials~~

~~**ARM** – Administrative Rules of Montana~~

~~**BACT** – Best Available Control Technology~~

~~**BTU** – British Thermal Unit~~

~~**CFR** – Code of Federal Regulations~~

~~**CO** – Carbon monoxide~~

~~**DEQ** – Montana Department of Environmental Quality~~

~~**EPA** – United States Environmental Protection Agency~~

~~**FCAA** – Federal Clean Air Act~~

~~**HAP** – Hazardous Air Pollutants~~

~~**LAER** – Lowest Achievable Emissions Rate~~

~~**MACT** – Maximum Achievable Control Technology~~

~~**MCA** – Montana Code Annotated~~

~~**NAAQS** – National Ambient Air Quality Standard~~

~~**NO_2** – Nitrogen dioxide~~

~~**O_3** – Ozone~~

~~**OAR** – Oregon Administrative Rules~~

~~**$PM_{2.5}$** – Particulate Matter under 2.5 microns in diameter~~

~~**PM_{10}** – Particulate Matter under 10 microns in diameter~~

~~**RACT** – Reasonably Available Control Technology~~

~~**RSID** – Rural Special Improvement District~~

~~**RV** – Recreational vehicle~~

~~**SID** – Special Improvement District~~

~~**SIP** – State Implementation Plan~~

~~**SO_2** – Sulfur dioxide~~

~~**TEOM** – Tapered Element Oscillating Microbalance~~

~~**USC** – United States Code~~

~~**VOC** – Volatile organic compound~~

µg/m^3	Micrograms Per Cubic Meter
AASHTO	American Association of State and Highway Transportation Officials
ARM	Administrative Rules of Montana

BACT	Best Available Control Technology
BTU	British Thermal Unit
C	Celsius
CFR	Code of Federal Regulations
cm	Centimeter
CO	Carbon Monoxide
DEQ	Montana Department of Environmental Quality
EPA	United States Environmental Protection Agency
FCAA	Federal Clean Air Act
HAP	Hazardous Air Pollutants
hr	Hour
LAER	Lowest Achievable Emissions Rate
lbs	Pounds
MACT	Maximum Achievable Control Technology
MCA	Montana Code Annotated
mg/m^3	Milligrams Per Cubic Meter
MT	Montana
NAAQS	National Ambient Air Quality Standard
NO_2	Nitrogen dioxide
O_3	Ozone
OAR	Oregon Administrative Rules
PM	Particulate Matter
$PM_{2.5}$	Particulate Matter with an Aerodynamic Diameter of 2.5 Microns or Less
PM_{10}	Particulate Matter with an Aerodynamic Diameter of 10 Microns or Less
RACT	Reasonably Available Control Technology
RSID	Rural Special Improvement District
RV	Recreational vehicle
SID	Special Improvement District
SIP	State Implementation Plan
SO_2	Sulfur Dioxide
USC	United States Code
VOC	Volatile Organic Compound

CHAPTER 1
PROGRAM AUTHORITY AND ADMINISTRATION

Rule 1.101 - Title
These regulations shall be known and may be cited as the Missoula City-County Air Pollution Control Program.

Rule 1.102 - Declaration of Policy and Purpose
The public policy of the City and County of Missoula (hereafter "City and County"), and the purpose of this Program, is to preserve, protect, improve, achieve and maintain such levels of air quality, as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the inhabitants, and facilitate the enjoyment of the natural attractions of the City and County, and to promote the economic and social development of the City and County. To this end, it is the purpose of this Program to require the use of all available practicable methods to reduce, prevent and control air pollution in the City and County. The regulations contained herein are hereby established and approved by the Missoula City-County Air Pollution Control Board, the Missoula City Council and the Missoula Board of County Commissioners to prevent, abate or control air pollution.

Rule 1.103 - Authorities for Program
(1) The authority to promulgate this Program and these regulations contained herein is provided in the MCA 75-2-301, 75-2-402, 7-1-2101, 7-5-2101(2) and 7-5-2104.

Rule 1.104 - Area of Jurisdiction
(1) Unless specific rules state otherwise, the provisions of this Program apply to all air pollution sources within the City and County, except:
(a) sources that require the preparation of an environmental impact statement pursuant to Title 75, chapter 1, part 2;

(b) sources that are subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; and

(c) sources that have the potential to emit 250 tons or more a year of any pollutant, including fugitive emissions, subject to regulation under Title 75, Chapter 2 and were not regulated by the County before January 1, 1991.

(d) sources that the Montana Board of Environmental Review has retained exclusive jurisdiction and control under the Clean Air Act of Montana under their findings and determination of 11/21/69, or subsequent order and determination.

(2) Notwithstanding (1) above, the provisions of Chapter 4 of this Program apply to all air pollution sources within the City and County, including those regulated and permitted by DEQ.

Rule 1.105 - Air Pollution Control Board
(1) There is created a Missoula City-County Air Pollution Control Board, hereafter referred to as the Control Board, which is responsible for the administration of this Program. The Missoula City-County Board of Health is the Control Board.

(2) The Control Board must have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Program.

(3) Any potential conflicts of interest by members of the Control Board must be adequately disclosed.

(4) The Chair of the Board of Health is the Chair of the Control Board.

(5) The Control Board shall hold at least one meeting per month and keep minutes of its proceedings,
(a) provided however, a regular monthly meeting need not be held if the Chair of the Control Board

determines there is no business necessary to be brought before the Control Board at that meeting and this determination is concurred in by the Health Officer and two other Control Board members. Such concurrence may be oral, or written. If a meeting is canceled under this provision, the Health Officer shall send a notice to all Control Board members stating the Chair of the Control Board's determination canceling the meeting and identifying the concurring Control Board members; and

(b) the Chair of the Control Board may call special meetings on his own motion and shall call them upon the request of two Control Board members.

(6) The Control Board may:
(a) recommend to the Missoula City Council and the Missoula Board of County Commissioners the adoption, the amendment, or the repeal of any regulations necessary to implement the provisions of this Program;

(b) hold hearings related to any aspect of the Program, and compel the attendance of witnesses and the production of evidence at such hearings;

(c) issue orders necessary to accomplish the purposes of this Program, and enforce them by appropriate judicial or administrative proceedings;

(d) instruct the department to measure pollution levels and take samples of air pollution at designated sites;

(e) instruct the department to conduct surveys, investigations, and research related to air pollution in Missoula County;

(f) instruct the department to collect and disseminate information and conduct educational and training programs related to prevention of air pollution;

(g) adopt a schedule of fees required for permits and administrative penalties under this Program;

(h) hear and decide appeals of decisions from the department issuing, denying, transferring, suspending, revoking, amending, or modifying any permits required by this Program;

(i) establish policy to be followed by the department in implementing this Program;

(j) perform any and all acts necessary for the successful implementation of this Program; and

(k) grant variances as provided in this Program.

Rule 1.106 - Air Quality Staff

(1) There is an air quality staff within the Missoula City-County Health Department. This staff consists of such employees as deemed necessary by the Control Board.

(2) The department shall employ personnel who possess training and qualifications commensurate with the financial budget and the technical and administrative requirements of the Control Board.

(3) The department's air quality staff shall:
(a) issue, deny, modify, transfer, revoke, and suspend permits provided for or required under this Program;

(b) issue written notices of violation, orders to take corrective action, and by any other appropriate administrative and judicial proceedings, enforce the provisions of this Program;

(c) measure pollution levels and take samples of air pollution at designated sites in Missoula County; conduct investigative surveys, and research related to air pollutants in Missoula County;
(d) collect and disseminate information and conduct educational and training Programs related to the prevention of air pollution;

(e) accept, receive and administer grants or other funds from public or private agencies for the purpose of carrying out any provisions of the Program;

(f) operate a laboratory for the study and control of air pollution; provide necessary scientific, technical, administrative, and operational services to the Control Board;

(g) establish an inventory of sources of air pollution in the County;

(h) perform such other acts and functions designated by the Control Board for the successful implementation of this Program;

(i) investigate complaints; and

(j) administer this Program.

Rule 1.107 - Air Quality Advisory Council

(1) There is created an Air Quality Advisory Council composed of nine (9) members. The Chair of the Control Board shall appoint them from among the general public residents within the County for terms of three (3) years, with three members appointed each year. The Advisory Council shall elect a chair from among its members.

(2) The Advisory Council shall hold at least two (2) regular meetings each calendar year and shall keep a summary record of its proceedings, which are open to the public for inspection. The Chair may call special meetings and shall call them upon receipt of a written request signed by two (2) or more members of the Advisory Council. The secretary shall notify each member of the time and place for all meetings. A majority of the members of the Advisory Council constitutes a quorum.

(3) A member of the air quality staff may serve as the secretary of the Advisory Council. The secretary shall keep records of meetings of, and actions taken by, the Council.

(4) The Advisory Council may consider any matter related to the purpose of this Program submitted to it by the Control Board. It may make recommendations to the Control Board on its own initiative concerning the administration of this Program.

CHAPTER 2
DEFINITIONS

Rule 2.101 - Definitions

The following definitions apply in this Program:

(1) "Advisory Council" means the Missoula City-County Air Quality Advisory Council created by this Program.

(2) "Air pollutant" or "pollutant" means dust, ash, fumes, gas, mist, smoke, vapor, odor, or any particulate matter or combination thereof present in the outdoor atmosphere.

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air pollutants, or any combination thereof in sufficient quantities, and of such character and duration as is or is likely to be injurious to the health or welfare of human, plant, animal life, or property, or that will unreasonably interfere with the enjoyment of life or property or the conduct of business.

(4) "Air Stagnation Zone" means the area defined by:
T12N R18W Sections 5 through 8, 17 through 19;
T12N R19W Sections 1through 35;
T12N R20W Sections 1 through 5, 8 through 17, 21 through 28, 34 through 36;
T13N R18W Sections 4 through 9, 16 through 21, 28 through 33;
T13N R19W Sections 1 through 36;
T13N R20W Sections 1 through 4, 9 through 16, 21 through 28, 33 through 36;
T14N R18W Sections 30, 31, 32;
T14N R19W Sections 13 through 36;
T14N R20W Sections 13 through 15, 21 through 28, 33 through 36 and all as shown on the attached map, (see Appendix A).

(5) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(6) "Animal matter" means any product or derivative of animal life.

(7) "Board of Health" means the Missoula City-County Board of Health.

(8) "BTU" means the British Thermal Unit, which is the heat required to raise the temperature of one pound of water through one degree Fahrenheit.

(9) "Chair" means the Chair of the Board of Health and the Missoula City-County Air Pollution Control Board.

(10) "Clean Air Act of Montana" means MCA Title 75, Chapter 2.

(11) "Control Board" means the Missoula City-County Air Pollution Control Board.

(12) "Control equipment" means any device or contrivance that prevents or reduces emissions.

(13) "Control Officer" means the Health Officer for the Missoula City-County Health Department, or any employee of the department designated by the Health Officer.

(14) "Department" means the Missoula City-County Health Department.

(15) "DEQ" means the Montana Department of Environmental Quality.

(16) "Emission" means a release of an air pollutant into the outdoor atmosphere.

(17) "EPA" means the United States Environmental Protection Agency.

(18) "FCAA" means 42 USC 7401 to 7671q, the Federal Clean Air Act, as amended.

(19) "Federally enforceable" means all limitations and conditions that are enforceable by the Administrator of the EPA, including but not limited to those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana State Implementation Plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

(20) "Fuel burning equipment" means any furnace, boiler, apparatus, stack or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.

(21) "Hazardous air pollutant" or "HAP" means any air pollutant listed in or pursuant 2 USC 7412(b).

(22) "Hazardous waste" means a substance defined as hazardous waste under either 75-10-403, MCA or administrative rules in ARM Title 17, chapter ~~54, subchapter 3~~53 subchapter 5 which incorporates by reference 40 CFR 261 or a waste containing 2 parts or more per million of polychlorinated biphenyl.

(23) "Impact Zone M" means the area outside the Flathead Reservation defined by:
T11N R17W Sections 1 through 6, 7 through 11, 17 through 18;
T11N R18W Sections 4 through 8, 17 through 20, 30 through 33;
T11N R19W Sections 1 through 36;
T11N R20W Sections 1 through 18, 20 through 29, 32 through 36;
T11N R21W Sections 1 through 13
T11N R22W Sections 1, 2, 11, 12;
T12N R16W Sections 18 through 20, 29 through 32;
T12N R17W Section 2 through 11, 13 through 36;
T12N R18W Sections 1 through 26, 28 through 33, 36;
T12N R19W Sections 1 through 36;
T12N R20W Sections 1 through 36;
T12N R21W Sections 1 through 36;
T12N R22W Sections 1, 2, 11 through 14, 23 through 26, 35, 36;
T13N R16W Sections 6, 7;
T13N R17W Sections 1 through 12, 15 through 21, 28 through 33;
T13N R18W Sections 1 through 36;
T13N R19W Sections 1 through 36;
T13N R20W Sections 1 through 36;
T13N R21W Sections 1 through 36;
T13N R22W Sections 1, 2, 11 through 14, 24, 25, 36;
T14N R16W Sections 18, 19, 30, 31;
T14N R17W Sections 5 through 8, 13 through 36;
T14N R18W Sections 1 through 36;
T14N R19W Sections 1 through 36;
T14N R20W Sections 1 through 36;
T14N R21W Sections 1 through 36;
T14N R22W Sections 1, 2, 11 through 14, 22 through 27, 34 through 36;
T15N R18W Sections 7 through 11, 14 through 23, 26 through 35;
T15N R19W Sections ~~7 through 36~~12 through 15, 21 through 29, 32 through 36;
T15N R20W Sections ~~7 through 36~~7 through 9, 15 through 23, 25 through 36;
T15N R21W Sections 9 through 16, 20 through 36;
T15N R22W Section 36; as shown on the map in Appendix A

(24) "Incinerator" means any equipment, device or contrivance used for the destruction of garbage, rubbish or other wastes by burning, but does not include devices commonly called tepee burners, silos, truncated cones, wigwam burners, or other such burners used commonly by the wood products industries when only woodwastes are burned.

(25) "Lowest achievable emission rate (LAER)" means for any source, that rate of emissions that reflects:

(i) The most stringent emission limitation contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
(ii) The most stringent emission limitation achieved in practice by such class or category of source, whichever is more stringent. In no event may the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowed by applicable new source performance standards under Rule 6.506 or the amount allowed for hazardous air pollutants under Rule 6.507. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source.

(26) "Malfunction" means a sudden and unavoidable failure of air pollution control equipment or process equipment, or a process when it affects emissions, to operate in a normal manner. A failure caused entirely or in part by poor maintenance, careless operation, poor design, or other preventable upset condition or preventable equipment breakdown is not a malfunction.

(27) "Modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(28) "Multiple chamber incinerator" means a device used to dispose of combustible refuse by burning, consisting of three or more refractory material lined combustion furnaces, arranged in series and physically separated by refractory walls, interconnected by gas passage ports or ducts and designed and operated for maximum combustion of the material to be burned.

(29) "NAAQS" means national ambient air quality standard.

(30) "Odor" means that property of an emission that stimulates the sense of smell.

(31) "Opacity" means the degree, expressed in percent, to which emissions reduce the transmission of light and obscure the view of an object in the background. Where the presence of uncombined water is the only reason for failure of an emission to meet an applicable opacity limitation contained in this chapter, that limitation does not apply. For the purpose of this chapter, opacity determination must follow all requirements, procedures, specifications, and guidelines contained in 40 CFR Part 60, Appendix A, method 9 (July 1, 1987 ed.), or by an in-stack transmissometer that complies with all requirements, procedures, specifications and guidelines contained in 40 CFR Part 60, Appendix B, performance specification 1 (July 1, 1987 ed.).

(32) "Particulate Matter" or "particulate" means any material, except water in uncombined form, that is or has been airborne, and exists as a liquid or a solid at standard conditions.

(33) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state or federal government, industry, institution, business, trust, estate or other entity.

(34) "$PM_{2.5}$" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix L, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated in accordance with 40 CFR Part 53.

(35) "PM_{10}" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix J, (52 FR 24664, July 1, 1987) and designated in accordance with 40 CFR Part 53 (52 FR 24727, July 1, 1987), or by an equivalent method designated in accordance with 40 CFR Part 53 (52 FR 24727, July 1, 1987).

(36) "Premises" means a property, piece of land, real estate or building.

(37) "Process weight" means the total weight of all materials introduced into any specific process that may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

(38) "Process weight rate" means the rate established as follows:
(a) For continuous or long run steady-state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(b) For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission applies.

(39) "Public nuisance" means any condition of the atmosphere beyond the property line of the offending person that:
(a) affects, at the same time, an entire community or neighborhood, or any considerable number of persons although the extent of the annoyance or damage inflicted upon individuals may be unequal), and
(b) endangers safety or health, or is offensive to the senses, or which causes or constitutes an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property.

(40) "Reasonably available control technology (RACT)" means devices, systems, process modifications or other apparatus or techniques determined on a case-by-case basis to be reasonably available, taking into account the necessity of imposing such controls in order to attain and maintain a national or Montana ambient air quality standard, the social, energy, environmental, and economic impacts of such controls and alternative means of providing for attainment and maintenance of such standard.

(41) "Reduction" means any heated process, including rendering, cooking, drying, dehydrating, digesting, evaporating and protein concentrating.

(42) "Regulated air pollutant" means the following:
(a) any air pollutant for which the State of Montana has adopted an ambient standard as listed in ARM Title 17, subchapter 8;
(b) nitrogen oxides or any volatile organic compound;
(c) any pollutant that is subject to any standard promulgated under section 111 of the FCAA (New Source Performance Standards);
(d) any class I or II substance subject to a standard under the Acid Rain Program, Title VI of the FCAA; and
(e) any pollutant that is subject to any standard or requirements promulgated under section 112 of the FCAA (Hazardous Air Pollutants).

(43) "Solid fuel burning device" means any fireplace, fireplace insert, woodstove, wood burning heater, wood fired boiler, coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking, or heating purposes, that burns less than 1,000,000 BTU's per hour.

(44) (a) "Solid waste" means all putrescible and non-putrescible solid, semi-solid, liquid or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants or air pollution control facilities; animal parts, offal, animal droppings or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; Styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment; transformers; insulated wire; oil or petroleum products; treated lumber and timbers; and pathogenic or infectious waste.
(b) Solid waste does not mean municipal sewage, industrial wastewater effluent, mining wastes regulated under the mining and reclamation laws administered by the DEQ, or slash and forest debris regulated under laws administered by the Department of Natural Resources.

(45) "Source" means any property, real or personal, or person contributing to air pollution.

(46) "Stack or chimney" means any flue, conduit or duct arranged to conduct emissions.

(47) "Standard conditions" means a temperature of 68° Fahrenheit and a pressure of 29.92 inches of mercury.

(48) "Stationary source" means any property, real or personal, including but not limited to a building, structure, facility, or equipment located on one or more contiguous or adjacent properties under the control of the same owner or operator that emits or may emit any regulated air pollutant, including associated control equipment that affects or would affect the nature, character, composition, amount or environmental impacts of air pollution.

(49) "Volatile organic compound" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(a) VOC does not include the following compounds, which have been determined to have negligible photochemical reactivity:

(i) methane;
(ii) ethane;
(iii) methyl acetate;
(iv) methylene chloride (dichloromethane);
(v) 1,1,1-trichloroethane (methyl chloroform);
(vi) 1,1,2-trichloro-1,2,2-trifluoroethane (CFC 113);
(vii) trichlorofluoromethane (CFC 11);
(viii) dichlorodifluoromethane (CFC-12);
(ix) chlorodifluoromethane (HCFC-22);
(x) trifluoromethane (HFC-23);
(xi) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114);
(xii) chloropentafluoroethane (CFC-115);
(xiii) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123);
(xiv) difluoromethane (HFC-32);
(xv) ethylfluoride (HFC-161);
(xvi) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
(xvii) 1,1,2,2,3- pentafluoropropane (HFC-245ca);
(xviii) 1,1,2,3,3- pentafluoropropane (HFC-245ea);
(xix) 1,1,1,2,3- pentafluoropropane (HFC-245eb);
(xx) 1,1,1,3,3- pentafluoropropane (HFC-245fa);
(xxi) 1,1,1,2,3,3- hexafluoropropane (HFC-236ea);
(xxii) 1,1,1,3,3- pentafluorobutane (HFC-365mfc);
(xxiii) chlorofluoromethane (HCFC-31);
(xxiv) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
(xxv) 1 chloro-1-fluoroethane (HCFC-151a);
(xxvi) 1,1,1,2,2,3,3,4,4-nonafluoro-4-methyoxy-butane ($C_4F_9OCH_3$);
(xxvii) 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2$ $CFCF_2OCH_3$);
(xxviii) 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$);
(xxix) 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2$ $CFCF_2OC_2H_5$);
(xxx) 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC43-10mee);
(xxxi) 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
(xxxii) 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
(xxxiii) 1,1,1,2-tetrafluoroethane (HFC-134a);
(xxxiv) 1,1-dichloro-1-fluoroethane (HCFC-141b);
(xxxv) 1-chloro-1,1-difluoroethane (HCFC-142b);
(xxxvi) 2-chloro-1,1,1,2-tetra-fluoroethane (HCFC-124);
(xxxvii) pentafluoroethane (HFC-125);
(xxxviii) 1,1,2,2-tetrafluoroethane (HFC-134);
(xxxix) 1,1,1-trifluoroethane (HFC-143a);
(xl) 1,1-difluoroethane (HFC-152a);
(xli) parachlorobenzotrifluoride (PCBTF);
(xlii) cyclic, branched or linear completely methylated siloxanes;
(xliii) acetone;
(xliv) perchloroethylene (tetrachloroethylene); and

(xlv) perfluorocarbon compounds that fall into these classes:

(A) cyclic, branched or linear completely fluorinated alkanes;

(B) cyclic, branched or linear completely fluorinated ethers with no unsaturations;

(C) cyclic, branched or linear completely fluorinated tertiary amines with no unsaturations; and

(D) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) To determine compliance with emission limits, VOCs will be measured by the test methods in 40 CFR Part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligible-reactive compounds may be excluded as VOCs if the amount of such compounds is accurately quantified, and such exclusion is approved by the department and the EPA. As a precondition to excluding these compounds as VOCs or at any time thereafter, the department may require an owner or operator to provide monitoring or testing methods and results, demonstrating to the satisfaction of the department, the amount of negligibly-reactive compounds in the source's emissions.

(50) "Wood-waste burners" means tepee burners, silos, truncated cones, wigwam burners, and other devices commonly used by the wood product industry for the disposal or burning of wood wastes.

CHAPTER 3
FAILURE TO ATTAIN STANDARDS

Rule 3.101 - Purpose
As required by 42 USC 7410(a)(2)(G) of the FCAA, this chapter outlines what the department will do in the event that ~~either~~ a non-attainment areas fails to attain the NAAQS or to make reasonable progress in reducing emissions.

Rule 3.102 - Particulate Matter Contingency Measures
(1) Within sixty (60) days after being notified by the DEQ and EPA that the area has failed to attain the PM_{10} NAAQS or make reasonable further progress in reducing emissions, the department will select and implement one of the following contingency measures:
(a) If the major contributing source is re-entrained road dust, then the department will implement Rule 8.304.

(b) If the major contributing source is wood burning, then the department will implement Rules 4.113 and 9.601.

(2) The department will determine what source is the significant contributor to the violation using chemical or microscopic analysis of exposed PM_{10} filters.

(3) If neither wood burning nor re-entrained road dust is the major contributing source, the department will still implement one of the contingency measures listed in (1) of this rule.

Rule 3.103 - Carbon Monoxide Contingency Measures
Within sixty (60) days of notification by the DEQ and the EPA that the area has failed to attain the carbon monoxide NAAQS or make reasonable further progress in reducing emissions, the department will implement Rules ~~9.119~~9.601 and if the department determines that motor vehicles are greater than 40 percent of the cause, the department will implement Rule 10.~~110~~111.

Rule 3.104 - Early Implementation of Contingency Measures
Early implementation of a contingency measure will not result in the requirement to implement additional moderate area contingency measures if the area fails to attain the NAAQS or make reasonable further progress in reducing emissions. However, if the area is redesignated as serious, additional control measures including Best Available Control Measures and serious area contingency measures will be necessary.

CHAPTER 4
MISSOULA COUNTY AIR STAGNATION AND EMERGENCY EPISODE AVOIDANCE PLAN

Rule 4.101 - Purpose

This chapter serves a dual purpose. As Missoula County's Air Stagnation Plan it protects the community from significant harm during air stagnation periods and prevents violation of the particulate matter ambient standards. As Missoula County's Emergency Episode Avoidance Plan, its purpose is to prevent high ambient concentrations of regulated air pollutants that may endanger public health and welfare. To both these ends, the regulations of this chapter control emissions from sources within Missoula County when meteorological conditions are not adequate to prevent high ambient concentrations of air pollutants. Planning for air stagnation and emergency episodes assures that emissions reduction is conducted effectively with minimal inconvenience to the sources and the general public.

Rule 4.102 - Applicability

(1) The provisions regarding Stage 1 Air Alerts apply to all persons and sources of air pollution located within Impact Zone M as defined in Rule 2.101(23).

(2) All other provisions of this chapter apply to all persons and sources of air pollution in Missoula County.

(3) The department may call Alerts, Warnings, Emergencies and Crises to be in effect in all or any portion of the county, using available scientific and meteorological data to determine the areas affected by high ambient concentrations of pollutants.

(4) When Alerts are not required, the department may call for voluntary compliance in any or all portions of the county, using available scientific and meteorological data to determine the areas affected by high ambient concentrations of pollutants.

(5) As specified in the 1991 stipulation between the Control Board and the Department of Health and Environmental Sciences (predecessor to DEQ) and agreed upon by the Board of Health and Environmental Sciences (predecessor to the Board of Environmental Review), the provisions of this chapter apply, as described in this Rule, to sources in Missoula County that are permitted by DEQ.

Rule 4.103 - General Provisions

(1) The four air pollution control stages are Stage I Alert, Stage II Warning, Stage III Emergency and Stage IV Crisis. Each stage is associated with thresholds of specific air pollutants. When ambient concentrations of air pollutants as specified in Rule 4.104 exceed a threshold, or in the case of particulate matter, are expected to exceed a threshold, required control activities must be implemented except as allowed by Rule 4.112.

(2) Nothing in this chapter limits the authority of the Control Board or department to act in an emergency situation. The department may act to protect the public from imminent danger caused by any air pollutant. Such action may include but is not limited to verbal orders to cease emission release, or ordering the use of specified procedures in the management of actual or potential toxic air pollution releases resulting from accidents involving the transportation, use, or storage of toxic chemicals or mixtures of chemicals that could result in the release of toxic chemicals.

(3) When in effect, the requirements of this chapter supersede all other regulations under this Program that are less restrictive.

Rule 4.104 - Air Pollution Control Stages

(1) Stage I - ALERT for Particulate Matter

(a) The department may declare a Stage I Alert for particulate matter if it determines using available scientific and meteorological data that, any of the following conditions occurs. If the department determines that the primary air pollution source is crustal, an alert can be called for the air stagnation zone, rather than all of Impact Zone M:

(i) whenever the ambient concentration of $PM_{2.5}$ meets or exceeds 21 ~~ug/~~µg/m^3 averaged over an eight hour period; or
(ii) whenever the ambient concentration of PM_{10} exceeds 80 ~~ug/~~µg/m^3 averaged over an eight hour period.

(b) The department shall declare a Stage I Alert for particulate matter if it determines using available scientific and ~~meterological~~meteorological data, that any of the following conditions occur unless dispersion conditions are expected to improve rapidly. If the department determines that the primary air pollution source is crustal, an alert can be called for the air stagnation zone, rather than all of Impact Zone M:
(i) whenever the ambient concentration of $PM_{2.5}$ meets or exceeds 28 ~~ug/~~µg/m^3 averaged over an eight hour average; or
(ii) whenever the ambient concentration of $PM_{2.5}$ can reasonably be expected to exceed 35 ~~ug/~~µg/m^3 averaged over the next 24 hours if a Stage I Alert is not called; or
(iii) whenever the ambient concentration of PM_{10} can reasonably be expected to exceed 150 ~~ug/~~µg/m^3 averaged over the next 24 hours if a Stage I Alert is not called.

(2) Stage II - WARNING

(a) The department shall declare a Stage II Warning for particulate matter if it determines using available scientific and ~~meterological~~meteorological data, that any of the following conditions occurs unless dispersion conditions are expected to improve rapidly:
(i) whenever the ambient concentration of $PM_{2.5}$ meets or exceeds 35 ~~ug/~~µg/m^3 for an eight hour average; or
(ii) whenever scientific and ~~meterological~~meteorological data indicate that the 24-hour average $PM_{2.5}$ concentrations will remain at or above 35 ~~ug/~~µg/m^3 if a Stage II Warning is not called; or
(iii) whenever the ambient concentration of PM_{10} exceeds 150 ~~ug/~~µg/m^3 averaged over an eight hour period and an Alert is already in effect; or
(iv) whenever the ambient concentration of PM_{10} exceeds 180 ~~ug/~~µg/m^3 average over an eight hour period and an Alert is not already in effect; or
(v) whenever scientific and meteorological data indicate that the 24 hour average PM_{10} concentrations will remain at or above 150 ~~ug/~~µg/m^3 if a Stage II Warning is not called.

(b) The department shall declare a Stage II WARNING whenever the ambient concentration of any of the following pollutants listed equals or exceeds the specified levels:

$SO~~0~~_2$	800 ~~ug/~~µg/m^3	24-hour average
CO	17 mg/m^3	3-hour average
O_3	400 ~~ug/~~µg/m^3	1-hour average
NO_2	1130 ~~ug/~~µg/m^3	1-hour average
NO_2	282 ~~ug/~~µg/m^3	24-hour average

(3) Stage III - EMERGENCY

The department shall declare a Stage III Emergency whenever the ambient concentration of any of the following pollutants listed equals or exceeds the specified levels:

$PM_{2.5}$	80 ~~ug/~~µg/m^3	24-hour average
PM_{10}	420 ~~ug/~~µg/m^3	24-hour average
$S~~0~~O_2$	1600 ~~ug/~~µg/m^3	24-hour average
CO	34 mg/m^3	3-hour average
O_3	800 ~~ug/~~µg/m^3	1-hour average
$NO~~0~~_2$	2260 ~~ug/~~µg/m^3	1-hour average
NO_2	565 ~~ug/~~µg/m^3	24-hour average

(4) Stage IV - CRISIS

The department shall declare a Stage IV CRISIS whenever the ambient concentration of any of the following pollutants listed equals or exceeds the specified levels:

$PM_{2.5}$	135 ~~ug/~~µg/m^3	24-hour average
PM_{10}	500 ~~ug/~~µg/m^3	24-hour average
SO_2	2100 ~~ug/~~µg/m^3	24-hour average

CO	46 mg/m^3	8-hour average
O_3	1000 ~~ug/~~µg/m^3	1-hour average
N~~O0~~O_2	3000 ~~ug/~~µg/m^3	1-hour average
NO_2	750 ~~ug/~~µg/m^3	24-hour average

(5) Ambient concentrations of pollutants are determined by the department using a reference method, or a device that correlates to a reference method air quality monitor or sampler.

(6) The department shall reduce an air pollution control stage to the appropriate stage when the department determines measurements of the ambient air indicate a corresponding reduction in pollutant levels and available meteorological data indicates that the concentration of such pollutant will not immediately increase again.

Rule 4.105 - Emergency Operations

(1) The department shall prepare an emergency episode operations plan, which includes the following information:

(a) an explanation of ambient air quality surveillance procedures;

(b) a description of how meteorological information is obtained and used during episodes;

(c) provisions for increased monitoring during episodes;

(d) provisions for increased staffing during episodes; and

(e) a communications plan for use during episodes.

Rule 4.106 - Abatement Plan For Certain Sources

(1) Each governmental road department shall have an abatement plan that describes what actions they will take to minimize road dust during air stagnation and emergency episodes. The plans must demonstrate the use of all reasonable measures to reduce road dust along heavily traveled streets and are subject to review and approval by the department.

(2) Each stationary source within Missoula County emitting or capable of emitting twenty-five (25) tons or more of PM_{10}, SO_2, CO, O_3 or NO_2 per year shall have a plan of abatement for reducing emissions of each such pollutant when the ambient concentration of such pollutant equals or exceeds the concentrations set forth in Rule 4.104. The plan, which is subject to review and approval by the department, must sufficiently demonstrate the ability of the source to reduce emissions as required under each stage of the emergency episode avoidance plan.

(3) Within 60 days of notification by the department that new requirements are in effect, a source required by this rule to have an abatement plan shall submit an updated plan to the department for review and approval.

(4) The department may require sources to periodically review and update their abatement plans, and submit them to the department for review and approval.

Rule 4.107 - Enforcement Procedure

(1) If any of the provisions of this chapter are being violated, or if, based on scientific and meteorological data, the Control Board or department has reasonable grounds to believe that there exists in Missoula County a condition of air pollution that requires immediate action to protect the public health or safety, the department or the Control Board or any law enforcement officer acting under the direction of the department or Control Board may order any person or persons causing or contributing to the air pollution to immediately reduce or completely discontinue the emission of pollutants.

(2) The order must specify the provision of the Program being violated and the manner of violation, and must direct the person or persons causing or contributing to the air pollution to reduce or completely discontinue the emission of air pollutants immediately. The order must notify the person to whom it is directed of the right to request a hearing. The order must be personally delivered to the person or persons in violation or

their agent.

(3) If a hearing is requested by a person or persons allegedly in violation of the provisions of this chapter, within 24 hours the department shall fix a time and place for a hearing to be held before the Control Board or a hearings examiner appointed by the Control Board. Not more than 24 hours after the commencement of such hearing, and without adjournment, the Control Board or hearings examiner shall affirm, modify, or set aside the order. A request for a hearing does not stay or nullify an order.

(4) If a person fails to comply with an order issued under this chapter, the department or the Control Board may initiate action under Chapter 15 of this Program.

(5) The right to request a hearing before the Control Board under this chapter does not apply to violations of Chapter 9. Enforcement procedures for violations of Chapter 9 are described in Rule 15.104.

Rule 4.108 - Stage I Alert Control Activities

(1) During a Stage I Alert, the department ~~shall~~:

(a) shall advise citizens via public media and the department's Air Pollution Hotline of the actions listed under an Alert, and of ~~medical~~ health precautions~~.~~; and

(b) shall suspend outdoor burning~~.~~; and

(c) may require construction companies to take additional effective dust-control action for roads under construction or repair.

(2) During a Stage I Alert, the following general curtailment provisions take effect:

(a) Residential solid fuel burning devices ~~shall~~ must comply with the applicable requirements of Chapter 9.

(b) Citizens should limit driving to necessary trips only and should avoid driving on unpaved surfaces such as dirt roads and unpaved shoulders and alleys.

(c) The City, County and State road departments shall take actions appropriate under the prevailing weather conditions to reduce road dust along heavily traveled streets, as described in their abatement plans required by Rule 4.106.

(d) Recreational fires must comply with the applicable requirements of Chapter 7.

(3) During a Stage I Alert, the following curtailment provisions for stationary sources take effect:

(a) Air pollution control equipment must be used to its maximum efficiency;

(b) Incinerators, except pathological incinerators, air pollution control devices and crematoriums, shall cease operation during an Alert.

(c) Commercial boiler operators should limit manual boiler lancing and soot blowing to between the hours of 12 p.m. and 4 p.m.

(d) A stationary source may not switch to a higher sulfur or ash content fuel unless:

(i) the source has continuous emission reduction equipment for the control of emissions caused by the alternate fuel; or

(ii) the low sulfur or ash content fuel supply has been interrupted by the utility supplying the fuel.

(e) Each stationary source emitting or capable of emitting twenty-five (25) tons or more per year of any pollutant shall implement its abatement plan to reduce emissions during an Alert.

Rule 4.109 - Stage II Warning Control Activities

(1) During a Stage II Warning, the department shall:

(a) advise citizens via public media and the Air Pollution Hotline of the actions described under a Warning, and of medical precautions.

(b) advise the public to eliminate all nonessential driving, and urge citizens to carpool or use non-motorized or public transportation.

(c) inspect operating stationary sources required to implement an abatement plan by Rule 4.106 to ensure compliance with the plan.

(d) notify DEQ so it can initiate notification and communication procedures contained in the Montana Emergency Episode Avoidance Plan (Montana SIP, Chapter 9). However, the department is responsible for notifying state and county permitted sources and the public of requirements under this plan.

(2) During a Stage II Warning, the following general curtailment provisions take effect:
(a) All Alert conditions remain in effect except where Warning steps are more stringent.

(b) Solid fuel burning devices must comply with the applicable requirements of Chapter 9.

(c) For sources other than solid fuel burning devices, a person may not cause, allow or discharge visible emissions from any source unless such source has a State or County operating permit.

(d) Recreational fires must comply with the applicable requirements of Chapter 7.

(3) During a Stage II Warning, the following curtailment provisions for stationary sources take effect:
(a) All Alert restrictions apply, except where Warning steps are more stringent;

(b) Pathological incinerators and crematoriums must limit operations to the hours between 12:00 p.m. and 4 p.m.;

(c) Commercial boiler operators shall limit manual boiler lancing and soot blowing to between the hours of 12 noon and 4 p.m.;

(d) Each stationary source emitting or capable of emitting twenty-five (25) tons or more per year of any pollutant shall implement its abatement plan to reduce emissions during a Warning using the maximum efficiency of abatement equipment in accordance with that plan.

(e) If so advised by the department, the source shall prepare to take action as advised under the Emergency conditions.

(4) The following additional provisions for stationary sources take effect if a Warning is in effect for any pollutant other than PM_{10} or when ambient PM_{10} levels reach 350 ~~ug/~~µg/m^3:
(a) The source must show substantial reductions in the emissions of air pollutants by using fuels with low ash and sulfur content;

(b) The source must show substantial reduction of air pollutants from manufacturing operations by curtailing, postponing, or deferring production and all operations;

(c) The source must show maximum reduction of air pollutants by deferring trade waste disposal operations that emit solid particles, gas vapors or malodorous substances; and

(d) The source must show maximum reduction of heat load demands for processing.

Rule 4.110 - Stage III Emergency Control Activities

(1) During a Stage III Emergency, the department shall:
(a) advise citizens via public media and the department's Air Pollution Hotline of the actions described under an Emergency and of medical precautions.

(b) inspect stationary sources required to implement an abatement plan by Rule 4.106 to ensure compliance with the plan.

(c) if conditions continue to worsen, issue a specific advisement that total curtailment under a Crisis condition is possible.

(d) notify DEQ so it can initiate notification and communication procedures contained in the Montana Emergency Episode Avoidance Plan (Montana State Implementation Plan, Chapter 9). However, the department is responsible for notifying state and county permitted sources and the public of requirements under this plan.

(2) During a Stage III Emergency, the following general curtailment provisions take effect:
(a) All Alert and Warning conditions apply, except where Emergency steps are more stringent.

(b) All nonessential public gatherings should be voluntarily canceled.

(c) Persons driving motor vehicles must reduce operations by use of carpools, non-motorized transportation and public transportation and by eliminating unnecessary driving.

(d) Solid fuel burning devices may not be operated.

(3) During a Stage III Emergency, the following curtailment provisions for stationary sources take effect:
(a) All Warning restrictions remain in effect, except where Emergency steps are more stringent;

(b) Incinerators, except pollution control devices, must cease operation;

(c) For manufacturing industries that require a relatively short lead time for shut down, the source must show elimination of air pollutants from manufacturing operations by ceasing, curtailing, postponing or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment.

(d) For sources still allowed to operate, a minimum forty percent (40%) reduction in emissions below maximum permissible operating emissions is required, except this requirement does not apply to those sources where the department determines such reductions are not physically possible. For manufacturing operations, the source may have to assume reasonable economic hardship by postponing production and allied operation to meet this reduction;

(e) Each stationary source emitting or capable of emitting twenty-five (25) tons or more per year of any pollutant shall implement its abatement plan to reduce emissions during an Emergency.

Rule 4.111 - Stage IV Crisis Control Activities

(1) During a Stage IV Crisis, the department shall:
(a) inspect stationary sources required to implement an abatement plan by Rule 4.106 to ensure compliance with the plan.

(b) The department will notify DEQ so it can initiate notification and communication procedures contained in the Montana Emergency Episode Avoidance Plan (Montana State Implementation Plan, Chapter 9). However, the department is responsible for notifying state and county permitted sources and the public of requirements under this plan.

(2) During a Stage IV Crisis, the following general curtailment provisions take effect:
(a) All conditions from the Alert, Warning, and Emergency stages apply except where Crisis steps are more stringent.

(b) Only those establishments (e.g., places of employment or business) associated with essential services may remain open. Essential services are news media, medically associated services (hospitals, labs, pharmacies), direct food supply (grocery markets, restaurants), drinking water supply and wastewater treatment, police, fire and health officials and their associated establishments. It is expressly intended that any service not defined as essential cease all business. Depending on the duration and nature of the crisis,

the department may add the operation of certain services and facilities to the list of essential services. Examples of businesses and establishments considered nonessential include, but are not limited to: banks (except for supplying funds for essential services), all offices, bars and taverns, laundries, gas stations, barber shops, schools (all levels), repair shops, amusement and recreation facilities, libraries, and city, state and federal offices (except those identified as essential services).

(c) The use of motor vehicles is prohibited except in emergencies with the approval of law enforcement and the department.

(3) During a Stage IV Crisis, the following curtailment provisions for stationary sources take effect:
(a) Stationary sources shall cease all manufacturing functions, but they may maintain operations necessary to prevent injury to persons or damage to equipment.

(b) Each stationary source emitting or capable of emitting twenty-five (25) tons or more per year of any pollutant shall implement its abatement plan to reduce emissions during a Crisis.

Rule 4.112 – Wildfire Smoke Episodes

(1) A Wildfire Smoke Episode is defined as a period of time in which the department determines, using available scientific and meteorological data, that wildfire smoke is the primary source of PM2.5 in the airshed.

(2) During a Wildfire Smoke Episode, the department may waive the PM2.5 requirements in 4.104 if the department determines, using available scientific and meteorological data, that instituting the Missoula County Air Stagnation and Emergency Episode Avoidance Plan would have negligible impacts on PM2.5 levels.

(3) During a Wildfire Smoke Episode, the department shall advise citizens via public media and the department's Air Pollution Hotline of current air pollution levels and health advisories.

(4) The department shall only waive the PM2.5 requirements in 4.104 for the duration of the Wildfire Smoke Episode. At any time, the department may reinstate all or parts of 4.104 as conditions change or as deemed necessary to protect human health.

(5) The department shall evaluate the impact of wildfire smoke on PM2.5 levels, using scientific and meteorological data, at a minimum of once a day during the Wildfire Smoke Episode.

(6) All other Missoula City-County Air Pollution Control Program Rules remain in effect during a Wildfire Smoke Episode.

Rule 4.113 - Contingency Measure

Upon notification by the DEQ and EPA that a violation of the 24 hour NAAQS for PM_{10} has occurred, and with departmental determination that solid fuel burning devices are greater than 40% percent of the cause, the department shall conduct extensive nighttime enforcement of the wood burning regulations when a Stage I Alert is declared.

CHAPTER 5
GENERAL PROVISIONS

Rule 5.101 - Inspections

(1) A duly authorized officer, employee, or representative of the Control Board or the department, upon the showing of identifying credentials, may enter and inspect any property except for a private residence, at any reasonable time, investigating or testing any actual or suspected source of air pollution or ascertaining the state of compliance with this Program and regulations in force pursuant thereto.

(2) A person may not refuse entry or access to any authorized member or representative of the Control Board or department who requests entry for the purposes mentioned in Section (1), or obstruct, hamper, or interfere in any manner with any such inspection.

(3) Any person subject to inspection under this Program shall provide a proper testing port, with reasonable access, on all stacks and chimneys.

(4) A person may not refuse entry or access to any authorized member or representative of the Control Board or department who requests entry for the purposes of inspecting a stationary source that is required by Rule 4.106(2) to have an emergency episode abatement plan and is operating within Missoula County during a Warning, Emergency or Crisis episode.

Rule 5.102 - Testing Requirements

(1) Any person or persons responsible for the emission of any air pollutant into the outdoor atmosphere shall upon written request of the department provide the facilities and necessary equipment including instruments and sensing devices and shall conduct tests, emission or ambient, for such periods of time as may be necessary using methods approved by the department. Such emission or ambient tests must include, but are not limited to, a determination of the nature, extent, and quantity of air pollutants that are emitted as a result of such operation at all sampling points designated by the department. The source shall maintain this data for at least one year and shall have it available for review by the department. Such testing and sampling facilities may be either permanent or temporary at the discretion of the person responsible for their provision, and must conform to all applicable laws and regulations concerning safe construction or safe practice.

(2) All sources subject to the requirements of 40 CFR Part 51 Appendix P shall install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions. All subject sources shall have installed all necessary equipment and begun monitoring and recording emissions data in accordance with Appendix P by January 31, 1988. A copy of 40 CFR Part 51 Appendix P may be obtained from the DEQ, P O Box 200901, Helena, MT 59620.

Rule 5.103 - Malfunctions

(1) The Control Officer or his designated representative must be notified promptly by phone whenever a malfunction occurs that can be expected to create emissions in excess of any applicable emission limitation, or to continue for a period greater than 4 hours. If telephone notification is not immediately possible, notification at the beginning of the next working day is acceptable. The notification must include the following information:

(a) identification of the emission points and equipment causing the excess emissions;

(b) magnitude, nature, and cause of the excess emissions;

(c) time and duration of the excess emissions;

(d) description of the corrective actions taken to remedy the malfunction and to limit excess emissions;

(e) information sufficient to assure the department that the failure to operate in a normal manner by the air pollution control equipment, process equipment or processes was not caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown; and

(f) readings from any continuous emission monitor on the emission point and readings from any ambient monitors near the emission point.

(2) Upon receipt of notification, the department shall investigate and determine whether a malfunction has occurred.

(3) If a malfunction occurs and creates emissions in excess of any applicable emission limitation, the department may elect to take no enforcement action if:
(a) the owner or operator of the source submits the notification as required by Section (1) above;

(b) the malfunction does not interfere with the attainment and maintenance of any state or federal ambient air quality standards; and

(c) the owner or operator of the source immediately undertakes appropriate corrective measures.

(4) Within one week after a malfunction has been corrected, the owner or operator shall submit a written report to the department which includes:
(a) a statement that the malfunction has been corrected, the date of correction, and proof of compliance with all applicable air quality standards contained in this chapter or a statement that the source is planning to install or has installed temporary replacement equipment in accordance with the requirements of (7) and (8) of this rule;

(b) a specific statement of the causes of the malfunction;

(c) a description of the preventive measures undertaken and/or to be undertaken to avoid such a malfunction in the future;

(d) a statement affirming that the failure to operate in a normal manner by the air pollution control equipment, process equipment, or processes was not caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown; and

(e) any information required by Section (1) not previously given to the department.

(5) The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate that a malfunction did occur.

(6) A person may not falsely claim a malfunction has occurred or submit to the department information, pursuant to this rule, that is false.

(7) Malfunctioning process or emission control equipment may be temporarily replaced without obtaining an air quality permit as required in Chapter 6, subchapter 1, if the department has been notified of the malfunction in compliance with this rule and if continued operation or non-operation of the malfunctioning equipment would:
(a) create a health or safety hazard for the public;

(b) cause a violation of any applicable air quality rule;

(c) damage other process or control equipment; or

(d) cause a source to lay-off or suspend a substantial portion of its workforce for an extended period.

(8) Any source that constructs, installs or uses temporary replacement equipment under (7) above shall comply with the following conditions:
(a) Prior to operation of the temporary replacement equipment, the source shall notify the department in writing of its intent to construct, install or use such equipment;

(b) Prior to operation of the temporary replacement equipment, the source shall demonstrate to the department that the estimated actual emissions from the equipment, operating at its maximum expected operating rate, are not greater than the potential to emit of the malfunctioning process or control equipment prior to the malfunction;

(c) The source shall record and at the department's request submit operating information sufficient to demonstrate that the temporary replacement equipment operated within the maximum expected operating rate;

(d) The temporary replacement equipment and the malfunctioning process or emission control equipment may not be operated simultaneously, except during a brief shakedown period or as otherwise approved in writing by the department; and

(e) The temporary replacement equipment must be removed or rendered inoperable within 180 days after initial startup of the temporary replacement equipment, or within 30 days after startup of the repaired malfunctioning equipment, whichever is earlier, unless the source has submitted to the department an application for an air quality permit for the temporary equipment or the department has approved a plan for removing the equipment or rendering it inoperable by a specific date.

Rule 5.104 - Reserved

Rule 5.105 - Circumvention

(1) A person may not cause or permit the installation or use of any device or any means that, without resulting in reduction in the total amount of air pollutant emitted, conceals or dilutes an emission of air pollutant that would otherwise violate an air pollution control regulation.

(2) A person may not divide or partition a property or properties used for a single activity, either by time or areas, in order to avoid regulation by this Program.

(3) A person may not knowingly:
(a) make false statements, representation, or certification in, or omit information from, or knowingly alter, conceal, or fail to file or maintain any notice, application, record, report, plan or other document required pursuant to this Program to be either filed or maintained;

(b) fail to notify or report as required under this Program; or

(c) falsify, tamper with, render inaccurate, or fail to install any monitoring device or method required to be maintained or followed under this Program.

Rule 5.106 - Public Nuisance

A person may not cause, suffer or allow any emissions of air pollutants beyond his property line in such a manner as to create a public nuisance.

Rule 5.107 - Reserved

Rule 5.108 - Permit Fees

(1) The Control Board shall establish a schedule for the payment of fees for inspections and issuance of permits or renewals under this Program. Such fees may be based upon factors including, but not limited to, the size of the unit inspected, the time involved in the inspection, the time involved in issuing the permit, the cost of administering and ensuring compliance of the regulations and any other factors the Control Board determines produces a fair and reasonable fee. Fees may be adopted or changed at any regularly scheduled meeting of the Control Board providing that the action is scheduled on the Control Board agenda and public comment is allowed. (See Attachment A for current fee schedule.)

(2) The fees must adequately compensate, but may not exceed, the direct and indirect costs to the department of administering the Program. ~~(added in response to comments from several businesses)~~

(3) For sources that are permitted by both DEQ pursuant to MCA 75-2-217 and this Program, the fee structure must be established after consultation with DEQ in a manner that is fair and equitable taking into account the fees paid to this Program and the DEQ, and the services rendered by each agency.

(4) All fees required under this subchapter are a debt due and owing under this Program that may be collected in a civil suit by the Control Board. All fees collected must be deposited in the Missoula County Health Fund.

(5) For fees based on estimated emissions, the owner or operator of a source may appeal any portion or all of the fee by requesting, in writing, an administrative review within 20 days of receipt of the department's fee assessment. If any portion of the fee is not appealed to the department, that portion is due 30 days after receipt of the department's fee assessment. Any remaining fee that is due after the completion of an appeal is due immediately upon the completion of the administrative appeals process or upon completion of any judicial review of the Control Board's decision.

Rule 5.109 and Rule 5.110 - Reserved

Rule 5.111 - ~~Amendments And Revisions~~Rule Changes to the Missoula City-County Air Pollution Control Program

~~(1) Amendments and revisions to this Program may be approved by a majority vote of the Control Board after a properly noticed public hearing. The department shall give notice by publication in a newspaper published at least once a week in Missoula County. The notice must be published two times with at least six days separating each publication. The first publication must be no more than 21 days prior to the hearing and the last no less than 3 days prior to the hearing. The published notice must contain the date, time and place at which the hearing will occur; a brief statement of the proposed amendments and revisions and the address and telephone number of the person who can be contacted for further information.~~

(1) The Control Board must hold a noticed public hearing for any proposed rule changes to the Missoula City County Air Pollution Control Program.

(a) The department shall maintain a list of interested persons who wish to be informed of actions related to rules adopted under this air pollution control program.

(b) At least 30 days before the hearing, the department shall give written notice of the intended action. The notice must include the following:

(i) a statement of the terms or substance of the intended action or a description of the subjects and issues affected by the intended action;

(ii) an explanation of the procedure for a person to be included on the list of interested persons established pursuant to subsection (1)(a) of this rule;

(iii) an explanation of the procedures and deadlines for presentation of oral or written comments related to the intended action; and

(iv) a rationale for the intended action(s) which explains why the intended action is reasonably necessary to implement the goals and purposes of the air pollution control program.

(c) The department shall provide a copy of the proposed rule changes to the list of interested persons established pursuant to Rule 5.111(1)(a) who have made timely request to be included on the list.

(d) The department shall prepare a written response to all comments submitted in writing or presented at the public hearing for consideration by the Control Board prior to adoption, revision, or repeal of the proposed rule.

(e) A person who submits a written comment on a proposed action or who attends a public hearing in

regard to a proposed action must be informed of the final action.

(f) Rule changes to this Program may be approved by a majority vote of the Control Board after a noticed public hearing.

(2) The Board of County Commissioners and the City Council may approve or veto the Control Board's amendments and revisions by resolution ~~at a public meeting~~ after a public hearing.

(3) Upon approval by the City Council and Board of County Commissioners, the Control Board shall forward the amendments or revisions to the Montana Board of Environmental Review for final approval. Unless otherwise provided for in the amendment or revision, the amendments and revisions are effective upon approval of the Montana Board of Environmental Review.

Rule 5.112 - Compliance With Other Statutes And Rules
Nothing in the provisions of this Program relieves any permittee of the responsibility for complying with any applicable City, County, federal or Montana statute, rule, or standard except as specifically provided in this Program.

Rule 5.113 - Severability Clause
If any Section or part thereof of this Program is declared invalid by a court of competent jurisdiction, such decision does not affect the remainder of the Program or any part thereunder.

Rule 5.114 - Limitations
Nothing in this Program:
(1) Grants the Control Board any jurisdiction or authority with respect to air pollution existing solely within buildings.

(2) Supersedes or limits the applicability of any law or regulation relating to sanitation, industrial health or safety.

CHAPTER 6
STANDARDS FOR STATIONARY SOURCES

Subchapter 1 - Air Quality Permits for Air Pollutant Sources

Rule 6.101 - Definitions

For the purpose of this subchapter the following definitions apply:

(1) "Air Quality Permit" or "permit" means a permit issued by the department for the construction, installation, alteration, or operation of any air pollution source. The term includes annual operating and construction permits issued prior to November 17, 2000.

(2) "Commencement of construction" means the owner or operator has either:

(a) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(3) "Construct or Construction" means on-site fabrication, modification, erection or installation of a source or control equipment, including a reasonable period for startup and shakedown.

(4) "Existing Source" means a source or stack associated with a source that is in existence and operating or capable of being operated or that had an air quality permit from the department or the Control Board on March 16, 1979.

(5) "Major Emitting Facility" means a stationary source or stack associated with a source that directly emits, or has the potential to emit, 100 tons per year of any air pollutant, including fugitive emissions, regulated under the Clean Air Act of Montana.

(6) "New or Altered Source" means a source or stack (associated with a source) constructed, installed or altered on or after March 16, 1979.

(7) "Owner or Operator" means the owner of a source or the authorized agent of the owner, or the person who is responsible for the overall operation of the source.

(8) "Portable source" means a source which is not stationary or fixed to a single location, and which is not fully self propelled. The term may include, but is not limited to, portable asphalt plants, portable gravel crushers and portable wood chippers

(9) "Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, must be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(10) "Source" means a "stationary source" as defined by Rule 2.101(45).

Rule 6.102 - Air Quality Permit Required

(1) A person may not construct, install, alter, operate or use any source without having a valid permit from the department when required by this rule to have a permit.

(2) A permit is required for the following:

(a) any source that has the potential to emit 25 tons or more of any pollutant per year;

(b) Incinerators; asphalt plants; concrete plants; and rock crushers without regard to size;

(c) Solid fuel burning equipment with the heat input capacity of 1,000,000 BTU/hr or more;

(d) A new stack or source of airborne lead pollution with a potential to emit five tons or more of lead per year;

(e) An alteration of an existing stack or source of lead pollution that increases the maximum potential of the source to emit airborne lead by 0.6 tons or more per year.

(3) A portable source with a Montana Air Quality Permit issued pursuant to the Administrative Rules of Montana Title 17, Chapter 8, subchapter 7 may apply for a Temporary Missoula City-County Air Quality Permit. The department may issue a Temporary Missoula City-County Air Quality Permit to a source if the following conditions are met:

(a) The applicant sends written notice of intent to transfer location to the department. Such notice must include documentation that the applicant has published a notice of the intended transfer in a legal publication in a newspaper of general circulation in the area into which the permit transfer is to be made. The notice must include the statement that the department will accept public comments for fifteen days after the date of publication; and

(b) The applicant has submitted a complete Missoula City-County Air Quality Permit application to the department prior to submitting an application for a Temporary Missoula City-County Air Quality Permit.

(4) A source with a Temporary Missoula City-County Air Quality Permit is subject to the following conditions:

(a) The emission control requirements of the Montana Air Quality Permit issued to the portable source are transferred verbatim, without augmentation, revision, or redaction to the Temporary Missoula City-County Air Quality Permit excluding conditions and addendums specific to PM_{10} nonattainment areas. Missoula City-County Health Department air quality permitting policies and conditions for the Missoula Air Stagnation Zone replace the Montana Air Quality Permit addendums specific to PM_{10} nonattainment areas; and

(b) The source may locate and operate in Missoula County after the department has approved the permit transfer; and

(c) A Temporary Missoula City-County Air Quality Permit expires in 180 days or upon completion of the Missoula City-County air quality permitting process required by Rule 6.102(3)(b), whichever occurs first; and

(d) The Department may revoke a Temporary Missoula City-County Air Quality Permit prior to the expiration of the time period set forth in 6.102(4)(c) if the portable source violates any provision of the Temporary Missoula City-County Air Quality Permit.

(5) An air quality permit is not required for the following, except when the Control Board determines an air quality permit is necessary to insure compliance with the NAAQS and other provisions of this Program:

(a) Any major stationary source or modification, as defined in 40 CFR 51.165 or 51.166, which is required to obtain an air quality permit from the MT DEQ in conjunction with ARM Title 17, Chapter 8, Subchapters 8, 9 or 10 <u>that does not have the potential to emit 250 tons a year or more of any pollutant subject to regulation under Title 75, Chapter 2, MCA, including fugitive emissions</u>;

(b) Residential, institutional, and commercial fuel burning equipment of less than l0,000,000 BTU/hr heat input if burning liquid or gaseous fuels, or 1,000,000 BTU/hr input if burning solid fuel;

(c) Residential and commercial fireplaces, barbecues and similar devices for recreational, cooking or heating use;

(d) motor vehicles, trains, aircraft or other such self-propelled vehicles;

(e) agricultural and forest prescription fire activities;

(f) emergency equipment installed in hospitals or other public institutions or buildings for use when the usual sources of heat, power and lighting are temporarily unattainable;

(g) routine maintenance or repair of equipment;

(h) public roads; and

(i) any activity or equipment associated with the planting, production or harvesting of agricultural crops.

(6) A source that is exempt from obtaining an air quality permit by Rule 6.102(5) is subject to all other applicable provisions of this program, including but not limited to those regulations concerning outdoor burning, odors, motor vehicles, fugitive particulate and solid fuel burning devices.

(7) A source not otherwise required to obtain an air quality permit may obtain such a permit for the purpose of establishing federally enforceable limits on its potential to emit.

Rule 6.103 - General Conditions

(1) An air quality permit must contain and permit holders must adhere to the following provisions:

(a) requirements and conditions applicable to both construction and subsequent use including, but not limited to, applicable emission limitations imposed by subchapter 5 of this chapter, the Clean Air Act of Montana and the FCAA.

(b) such conditions as are necessary to assure compliance with all applicable provisions of this Program and the Montana SIP.

(c) a condition that the source shall submit information necessary for updating annual emission inventories.

(d) a condition that the permit must be available for inspection by the department at the location for which the permit is issued.

(e) a statement that the permit does not relieve the source of the responsibility for complying with any other applicable City, County, federal or Montana statute, rule, or standard not contained in the permit.

(2) An air quality permit is valid for five years, unless:

(a) additional construction that is not covered by an existing construction and operating permit begins on the source;

(b) a change in the method of operation that could result in an increase of emissions begins at the source;

(c) the permit is revoked or modified as provided for in Rules 6.108 and 6.109; or

(d) the permit clearly states otherwise.

(3) A source whose permit has expired may not operate until it receives another valid permit from the department.

(4) An air quality permit for a new or altered source expires 36 months from the date of issuance if the construction, installation, or alteration for which the permit was issued is not completed within that time. Another permit is required pursuant to the requirements of this subchapter for any subsequent construction, installation, or alteration by the source. The department may grant a 12-month extension to an air quality permit if the construction, installation or alteration has not been completed within the initial 36 months and applicable local, state and federal rules have not changed. The department may grant no more than two 12-month extensions.

(5) A new or altered source may not commence operation, unless the owner or operator demonstrates that construction has occurred in compliance with the permit and that the source can operate in compliance with applicable conditions of the permit, provisions of this Program, and rules adopted under the Clean Air Act of Montana and the FCAA and any applicable requirements contained in the Montana SIP.

(6) Commencement of construction or operation under a permit containing conditions is deemed acceptance of all conditions so specified, provided that this does not affect the right of the permittee to appeal the imposition of conditions through the Control Board hearing process as provided in Chapter 14.

(7) Having an air quality permit does not affect the responsibility of a source to comply with the applicable requirements of any control strategy contained in the Montana SIP.

Rule 6.104 - Reserved

Rule 6.105 - Air Quality Permit Application Requirements

(1) The owner or operator of a new or altered source shall, not later than 180 days before construction begins, or if construction is not required not later than 120 days before installation, alteration, or use begins, submit an application for an air quality permit to the department on forms provided by the department.

(a) An application submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or an authorized representative, if that representative is responsible for the overall operation of the source;

(b) An application submitted by a partnership or a sole proprietorship must be signed by a general partner or the proprietor respectively;

(c) An application submitted by a municipal, state, federal or other public agency must be signed by either a principal executive officer, appropriate elected official or other duly authorized employee; and

(d) An application submitted by an individual must be signed by the individual or his or her authorized agent.

(2) The application must include the following:

(a) A map and diagram showing the location of the proposed new or altered source and each stack associated with the source, the property involved, the height and outline of the buildings associated with the new or altered source, and the height and outline of each stack associated with the new or altered source;

(b) A description of the new or altered source including data on maximum design production capacity, raw materials and major equipment components;

(c) A description of the control equipment to be installed;

(d) A description of the composition, volume and temperatures of the effluent stream, including the nature and extent of air pollutants emitted, quantities and means of disposal of collected pollutants, and the air quality relationship of these factors to conditions created by existing sources or stacks associated with the new or altered source;

(e) Normal and maximum operating schedules;

(f) Adequate drawings, blueprints, specifications or other information to show the design and operation of the equipment involved;

(g) Process flow diagrams containing material balances;

(h) A detailed schedule of construction or alteration of the source;

(i) A description of the shakedown procedures and time frames that will be used at the source;

(j) Other information requested by the department that is necessary to review the application and determine whether the new or altered source will comply with applicable provisions of this Program; including but not limited to information concerning compliance with environmental requirements at other facilities;

(k) Documentation showing the city or county zoning office was notified in writing by the applicant that the proposed use requires an air quality permit;

(l) A valid city or county zoning compliance permit for the proposed use;

(3) The department may waive the requirement that any of the above information must accompany a permit application.

(4) When renewing an existing permit, the owner or operator of a source is not required to submit information

already on file with the department. However, the department may require additional information to ensure the source will comply with all applicable requirements.

(5) An application for a solid or hazardous waste incinerator must include the information specified in Rule 6.605.

(6) An owner or operator of a new or altered source proposing construction or alteration within any area designated as nonattainment in 40 CFR 81.327 for any regulated air pollutant shall demonstrate that all major emitting facilities located within Montana and owned or operated by such persons, or by an entity controlling, controlled by, or under common control with, such persons, are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable air quality emission limitations and standards contained in ARM Title 17, Chapter 8.

(7) The owner or operator of a new or altered source shall, before construction is scheduled to end as specified in the permit, submit additional information on a form provided by the department. The information to be submitted must include the following:

(a) Any information relating to the matters described in Section (2) of this rule that has changed or is no longer applicable; and

(b) A certification by the applicant that the new or altered source has been constructed in compliance with the permit.

(8) An application is deemed complete on the date the department received it unless the department notifies the applicant in writing within thirty (30) days thereafter that it is incomplete. The notice must list the reasons why the application is considered incomplete and must specify the date by which any additional information must be submitted. If the information is not submitted as required, the application is considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. The application is complete on the date the required additional information is received.

Rule 6.106 - Public Review of Air Quality Permit Application

(1) The applicant shall notify the public, by means of legal publication in a newspaper of general circulation in the area affected by the application of its application for an air quality permit. The notice must be published not sooner than ten (10) days prior to submittal of an application nor later than ten (10) days after submittal of an application. The applicant shall use the department's format for the notice. The notice must include:

(a) the name and the address of the applicant;

(b) address and phone number of the premises at which interested persons may obtain further information, may inspect and may obtain a copy of the application;

(c) the date by which the department must receive written public comment on the application. The public must be given at least 30 days from the date the notice is published to comment on the application.

(2) The department shall notify the public of its preliminary determination by means of legal publication in a newspaper of general circulation in the area affected by the application and by sending written notice to any person who commented on the application during the initial 30-day comment period. Each notice must specify:

(a) whether the department intends on issuing, issuing with conditions, or denying the permit;

(b) address and phone number of the premises at which interested persons may obtain further information, may inspect and may obtain a copy of the proposed permit;

(c) the date by which the department must receive written public comment on the application. The public must be given at least 15 days from the date the notice is published to comment on the application.

(3) A person who has submitted written comments and who is adversely affected by the department's final decision may request, in writing, a hearing before the Control Board within fifteen (15) days after the

department's final decision. The request for hearing must state specific grounds why the permit should not be issued, should be issued, or why it should be issued with particular conditions. Department receipt of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing process.

(4) Permit renewals are subject to this rule.

Rule 6.107 - Issuance or Denial of an Air Quality Permit

(1) A permit may not be issued to a new or altered source unless the applicant demonstrates that the source:

(a) can be expected to operate in compliance with:

(i) the conditions of the permit~~,~~;

(ii) the provisions of this Program;

(iii) rules adopted under the Clean Air Act of Montana~~)~~ and the FCAA~~.~~; and

(iv) any applicable control strategies contained in the Montana SIP.

(b) will not cause or contribute to a violation of a Montana or NAAQS.

(2) An air quality permit for a new or altered source may be issued in an area designated as nonattainment in 40 CFR 81.327 only if the applicable SIP approved in 40 CFR Part 52, Subpart BB is being carried out for that nonattainment area.

(3) The department shall make a preliminary determination as to whether the air quality permit should be issued or denied within forty (40) days after receipt of a completed application.

(4) The department shall notify the applicant in writing of its final decision within sixty (60) days after receipt of the completed application.

(5) If the department's final decision is to issue the air quality permit, the department may not issue the permit until:

(a) fifteen (15) days have elapsed since the final decision and no request for a hearing before the Control Board has been received; or

(b) the end of the Control Board Hearing process as provided for in Chapter 14, if a request for a Control Board Hearing was received.

(6) If the department denies the issuance of an air quality permit it shall notify the applicant in writing of the reasons why the permit is being denied and advise the applicant of his or her right to request a hearing before the Control Board within fifteen (15) days after receipt of the department's notification of denial of the permit.

Rule 6.108 - Revocation or Modification of an Air Quality Permit

(1) An air quality permit may be revoked for any violation of:

(a) A condition of the permit;

(b) A provision of this Program;

(c) An applicable regulation, rule or standard adopted pursuant to the FCAA;

(d) A provision of the Clean Air Act of Montana; or

(f) any applicable control strategies contained in the Montana SIP.

(2) An air quality permit may be modified for the following reasons:

(a) Changes in any applicable provisions of this Program adopted by the Control Board, or rules adopted under the Clean Air Act of Montana;

(b) Changed conditions of operation at a source that do not result in an increase of emissions

(c) When the department or Control Board determines modifications are necessary to insure compliance with the provisions of this Program or an implementation plan approved by the Control Board.

(3) The department shall notify the permittee in writing of its intent to revoke or modify the permit. The permit is deemed revoked or modified in accordance with the department's notice unless the permittee makes a written request for a hearing before the Control Board within fifteen (15) days of receipt of the department's notice. Departmental receipt of a written request initiates the appeals process outlined in Chapter 14 of this Program and postpones the effective date of the department's decision to revoke or modify the permit until the conclusion of the hearing process.

Rule 6.109 - Transfer of Permit

(1) An air quality permit may not be transferred from one location to another or from one piece of equipment to another, except as allowed in (2) of this rule.

(2) An air quality permit may be transferred from one location to another if:

(a) written notice of intent to transfer location is sent to the department, along with documentation that the permittee has published notice of the intended transfer by means of a legal publication in a newspaper of general circulation in the area to which the transfer is to be made. The notice must include the statement that public comment will be accepted by the department for fifteen days after the date of publication;

(b) the source will operate in the new location for a period of less than one year; and

(c) the source is expected to operate in compliance with:

(i) this Program;

(ii) the standards adopted pursuant to the Clean Air Act of Montana, including the Montana ambient air quality standards;

(iii) applicable regulations and standards promulgated pursuant to the FCAA, including the NAAQS; and

(iv) any control strategies contained in the Montana state implementation plan.

(d) the source has a valid city or county zoning compliance permit for the proposed use at the new location; and

(e) the source pays the transfer fee listed in Attachment A.

(3) An air quality permit may be transferred from one person to another if written notice of intent to transfer, including the names of the transferor and the transferee, is sent to the department.

(4) The department will approve or disapprove a permit transfer within 30 days after receipt of a complete notice of intent as described in (2) or (3) of this rule.

Subchapters 2, 3, 4 - Reserved

Subchapter 5 – Emission Standards

Rule 6.501 - Emission Control Requirements

(1) For the purpose of this rule, Best Available Control Technology (BACT)" means an emission limitation (including a visible emission standard), based on the maximum degree of reduction for each pollutant subject to regulation under the FCAA or the Clean Air Act of Montana, that would be emitted from any proposed stationary source or modification that the department, on a case by case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event may application of BACT result in emission of any pollutant that would exceed the emissions allowed by any applicable standard under Rules 6.506 or 6.507. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of BACT. Such standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means which achieve equivalent results.

(2) The owner or operator of a new or altered source for which an air quality permit is required by subchapter 1 of this Chapter shall install on that source the maximum air pollution control capability that is technically practicable and economically feasible, except that:

(a) best available control technology must be used; and

(b) the lowest achievable emission rate must be met when required by the FCAA.

(3) The owner or operator of any air pollution source for which an air quality permit is required by subchapter 1 of this Chapter shall operate all equipment to provide the maximum air pollution control for which it was designed.

(4) The department may establish emission limits on a source based on an approved state implementation plan or maintenance plan to keep emissions with in a budget.

Rule 6.502 - Particulate Matter from Fuel Burning Equipment

(1) For the purpose of this rule "new fuel burning equipment" means any fuel burning equipment constructed or installed after November 23, 1968.

(2) The following emission limits apply to solid fuel burning equipment constructed or installed after May 14, 2010 with a heat input capacity from 1,000,000 BTU/hr up to and including 10,000,000 BTU/hr.

(a) Inside the Air Stagnation Zone, solid fuel burning equipment must meet LAER and a person may not cause or allow particulate matter emissions in excess of 0.1 pounds per million BTU heat input to be discharged from any stack, opening or chimney into the atmosphere.

(b) Outside the Air Stagnation Zone, solid fuel burning equipment must meet BACT and a person may not cause or allow particulate matter emissions in excess of 0.20 lbs per million BTU heat input to be discharged from any stack, opening or chimney into the atmosphere.

(3) For devices or operations not covered in Rule 6.502(2), a person may not cause or allow particulate matter caused by the combustion of fuel to be discharged from any stack or chimney into the atmosphere in excess of the hourly rates set forth in the following table:

Heat Input	Maximum Allowable Emissions of Particulate Matter

(million BTUs/hr)	(lbs/million BTU's)	
	Existing Fuel Burning Equipment	New Fuel Burning Equipment
≤ 10	0.60	0.60
100	0.40	0.35
1,000	0.28	0.20
≥ 10,000	0.19	0.12

(4) For a heat input between any two consecutive heat inputs stated in the preceding table, maximum allowable emissions of particulate matter are shown for existing fuel burning equipment on Figure 1 and for new fuel burning equipment on Figure 2. For the purposes hereof, heat input is calculated as the aggregate heat content of all fuels (using the upper limit of their range of heating value) whose products of combustion pass through the stack or chimney.

(5) When two or more fuel burning units are connected to a single stack, the combined heat input of all units connected to the stack may not exceed that allowable for the same unit connected to a single stack.

(6) This rule does not apply to:

(a) emissions from residential solid fuel combustion devices, such as fireplaces and wood and coal stoves with heat input capacities less than 1,000,000 BTU per hour; and

(b) new stationary sources subject to Rule 6.506 for which a particulate emission standard has been promulgated.

FIGURE 1
Maximum Emission of Particulate Matter from Existing Fuel Burning Installations

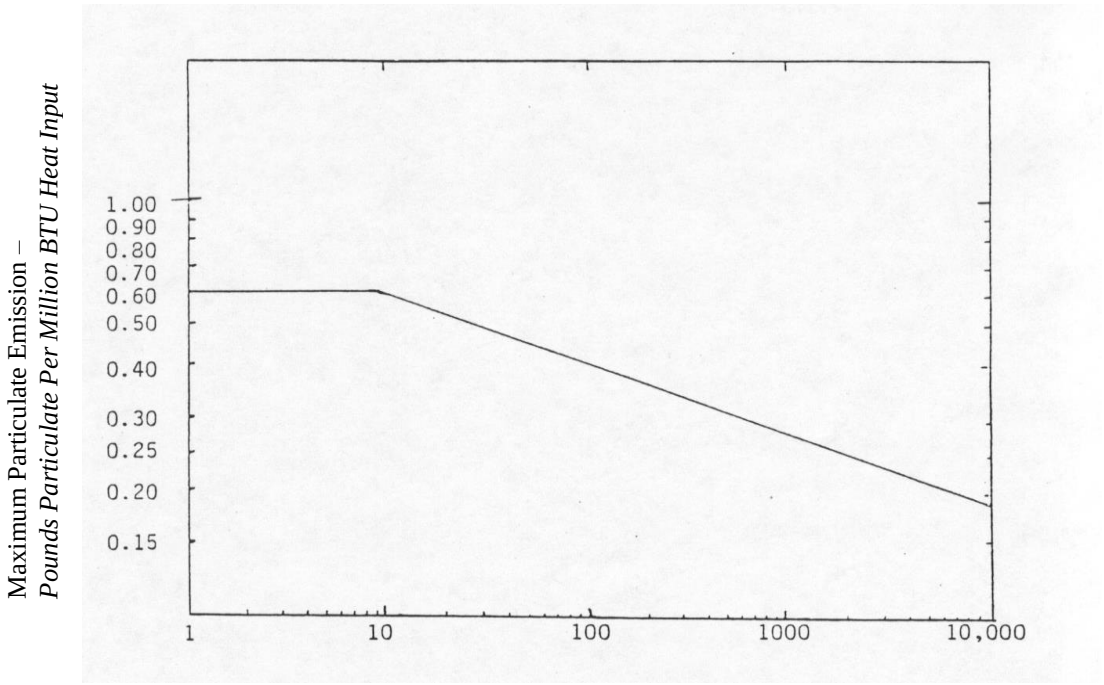
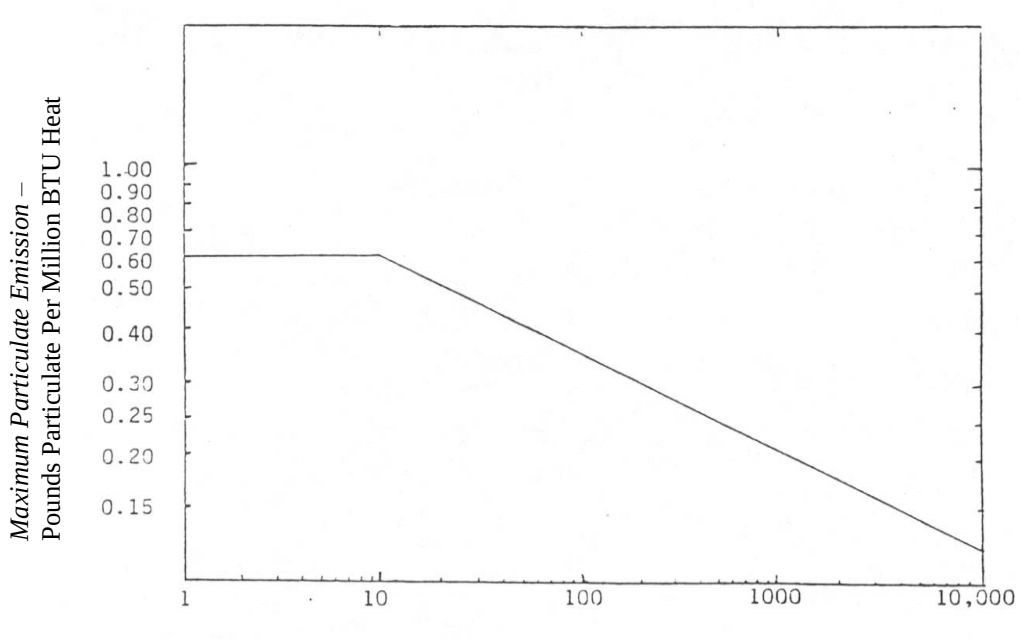


FIGURE 2
Maximum Emission of Particulate Matter from New Fuel Burning Installations



Rule 6.503 - Particulate Matter from Industrial Processes

(1) A person may not cause or allow particulate matter in excess of the amount shown in the following table to be discharged into the outdoor atmosphere from any operation, process or activity.

Process (lb/hr)	Weight Rate (tons/hr)	Rate of Emission (lb/hr)
100	0.0	0.551
200	0.10	0.877
400	0.20	1.40
600	0.30	1.83
800	0.40	2.22
1,000	0.50	2.58
1,500	0.75	3.38
2,000	1.00	4.10
2,500	1.25	4.76
3,000	1.50	5.38
3,500	1.75	5.96
4,000	2.00	6.52
5,000	2.50	7.58
6,000	3.00	8.56
7,000	3.50	9.49
8,000	4.00	10.4
9,000	4.50	11.2
10,000	5.00	12.0
12,000	6.00	13.6
16,000	8.00	16.5
18,000	9.00	17.9
20,000	10.00	19.2
30,000	15.00	25.2
40,000	20.00	30.5
50,000	25.00	35.4
60,000	30.00	40.0
70,000	35.00	41.3
80,000	40.00	42.5
90,000	45.00	43.6
100,000	50.00	44.6
120,000	60.00	46.3
140,000	70.00	47.8
160,000	80.00	49.0
200,000	100.00	51.2
1,000,000	500.00	69.0
2,000,000	1,000.00	77.6
6,000,000	3,000.00	92.7

(2) When the process weight rate falls between two values in the table, or exceeds 3,000 tons per hour, the maximum hourly allowable emissions of particulate are calculated using the following equations:

(a) for process weight rates up to 60,000 pounds per hour:

$$E = 4.10\ P^{0.67}$$

(b) for process weight rates in excess of 60,000 pounds per hour:

$$E = 55.0\ P^{0.11} - 40$$

Where E = rate of emission in pounds per hour and P = process weight rate in tons per hour.

(3) This rule does not apply to particulate matter emitted from:

(a) the reduction cells of a primary aluminum reduction plant,

(b) those new stationary sources listed in Rule 6.506 for which a particulate emission standard has been promulgated,

(c) fuel burning equipment, and

(d) incinerators.

Rule 6.504 - Visible Air Pollutants

(1) A person may not cause or allow emissions that exhibit an opacity of forty percent (40%) or greater averaged over six consecutive minutes to be discharged into the outdoor atmosphere from any source installed on or before November 23, 1968, the provisions of this rule do not apply to transfer of molten metals or emissions from transfer ladles.

(2) A person may not cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed after November 23, 1968, that exhibit an opacity of twenty percent (20%) or greater averaged over six consecutive minutes.

(3) During the building of new fires, cleaning of grates, or soot blowing, the provisions of Sections (1) and (2) apply, except that a maximum average opacity of sixty percent (60%) is permissible for not more than one four minute period in any 60 consecutive minutes. Such a four-minute period means any four consecutive minutes.

(4) This rule does not apply to emissions from:

(a) wood-waste burners;

(b) incinerators;

(c) motor vehicles;

(d) those new stationary sources listed in ARM 17.8.340 for which a visible emission standard has been promulgated; or

(e) residential solid-fuel burning devices.

Rule 6.505 - Fluoride Emissions

(1) A person may not cause or allow to be discharged into the outdoor atmosphere from any phosphate rock or phosphorate processing equipment or equipment used in the production of elemental phosphorous, enriched phosphates, phosphoric acid, defluorinated phosphates, phosphate fertilizers or phosphate concentrates or any equipment used in the processing of fluorides or wastewater enriched flourides, in a gaseous or particulate form or any combination of gaseous or particulate forms in excess of 0.3 pounds per ton of P_2O_5 (phosphorous pentoxide) introduced into the process of any calcining, nodulizing, defluorinating or acidulating process or any combination of the foregoing, or any other process, except aluminum reduction, capable of causing a release of fluorides in the form or forms indicated in this rule.

(2) Pond emissions:

(a) A person may not cause or allow fluorides in excess of 108 micrograms per square centimeter per 28 days ($\mu g/cm^2$/28 days) to be released into the outdoor atmosphere from any storage pond, settling basin, ditch, liquid holding tank or other liquid holding or conveying device from operations outlined in Section (1). The concentration of fluorides is to be determined using the calcium formate paper method. Papers must be exposed in a standard Montana Box located not less than 18 inches or more than 48 inches above the level of the liquid in the devices herein enumerated and not more than 16 inches laterally from the liquid's edge. Other locations may be permitted if approved by the department.

(b) At least four such sampling stations must be placed at locations designated by the department. Two or more calcium formate papers, as designated by the department, must be exposed in the standard Montana Box for a period designated by the department. Regardless of the duration of the sampling period, the values determined must be corrected to 28 days.

(c) A minimum of two calcium formate papers for each sampling period from each sample box must be provided to the department, if requested, within ten days from the date of the request.

(3) Preparation, exposure and analysis:

(a) Preparation of calcium formate papers:

(i) Soak Whatman #2, 11 cm. filter papers in a 10 percent solution of calcium formate for five minutes.

(ii) Dry in a forced air oven at 80°C. Remove immediately when dryness is reached.

(b) Exposure of calcium formate papers:

(i) Two papers, or more, if directed, are suspended in a standard Montana Box on separate hangers at least two inches apart.

(ii) Exposure must be for 28 days + 3 days unless otherwise indicated by the department.

(iii) Calcium formate papers must be kept in an air tight container both before and after exposure until the time of analysis.

(c) Analysis of calcium formate papers is adapted from Standard Methods for the Examination of Water and Waste Water; using Willard-Winter perchloric acid distillations and the Spadns-Zirconium Lake method for fluoride determination.

Rule 6.506 - New Source Performance Standards

(1) For the purpose of this rule, the following definitions apply:

(a) "Administrator", as used in 40 CFR Part 60, means the department, except in the case of those duties that cannot be delegated to the local program by the state and the EPA, in which case "administrator" means the administrator of the EPA.

(b) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the Federal Clean Air Act.

(2) The terms and associated definitions specified in 40 CFR 60.2, apply to this rule, except as specified in subsection (1)(a) above.

(3) The owner and operator of any stationary source or modification, as defined and applied in 40 CFR Part 60, shall comply with the standards and provisions of 40 CFR Part 60.

(4) For the purpose of this rule, the Control Board hereby adopts and incorporates by reference 40 CFR Part 60, which pertains to standards of performance for new stationary sources and modifications.

Rule 6.507 - Hazardous Air Pollutants

(1) For the purpose of this rule, the terms and associated definitions specified in 40 CFR 61.02 apply, except that:

(a) "Administrator", as used in 40 CFR Part 61, means the department, except in the case of those duties that cannot be delegated to the local program by the state and the EPA in which case "administrator" means the administrator of the EPA.

(2) The owner or operator of any existing or new stationary source, as defined and applied in 40 CFR Part 61, shall comply with the standards and provisions of 40 CFR Part 61.

(3) For the purpose of this rule, the Control Board hereby adopts and incorporates by reference 40 CFR Part 61, which pertains to emission standards for hazardous air pollutants.

Rule 6.508 - Hazardous Air Pollutants for Source Categories

(1) For this rule, the following definitions apply:

(a) "112(g) exemption" means a document issued by the department on a case-by-case basis, finding that a major source of HAP meets the criteria contained in 40 CFR 63.41 [definition of "construct a major source", (2)(i) through (vi)], and is thus exempt from the requirements of 42 USC 7412(g).

(b) "Beginning actual construction" means, in general, initiation of physical on-site construction activities of a permanent nature. Such activities include, but are not limited to, installing building supports and foundations, laying underground pipework, and constructing permanent storage structures.

(c) "Construct a major source of HAP" means:

(i) to fabricate, erect, or install a major source of HAP; or

(ii) to reconstruct a major source of HAP, by replacing components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(A) the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable process or production unit; and

(B) it is technically and economically feasible for the reconstructed major source to meet the applicable MACT emission limitation for new sources established under 40 CFR 63 subpart B.

(d) "Greenfield site" means a contiguous area under common control that is an undeveloped site.

(e) "MACT standard" means a standard that has been promulgated pursuant to 42 USC 7412(d), (h), or (j).

(f) "Major source of HAP" means:

(i) at any greenfield site, a stationary source or group of stationary sources that is located within a contiguous area and under common control and emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP; or

(ii) at any developed site, a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP.

(g) "Maximum achievable control technology" or "MACT" means the emission limitation that is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and that reflects the maximum degree of reduction in emissions that the department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source of HAP.

(h) "Notice of MACT approval" means a document issued by the department containing all federally enforceable conditions necessary to enforce MACT or other control technologies such that the MACT emission limitation is met.

(i) "Process or production unit" means any collection of structures and/or equipment, that processes, assembles, applies or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

(2) The owner or operator of any affected source, as defined and applied in 40 CFR Part 63, shall comply with the requirements of 40 CFR 63, incorporated by reference in this rule. All references in 40 CFR 63, Subpart B to "permitting authority" refers to the department.

(3) Any owner or operator who constructs a major source of HAP is required to obtain from the department a notice of MACT approval or a 112(g) exemption pursuant to this rule, prior to beginning actual

construction, unless:

(a) the major source has been specifically regulated or exempted from regulation under a MACT standard issued pursuant to 42 USC 7412(d), (h) or (j) and incorporated into 40 CFR Part 63;

(b) the owner or operator of the major source has already received all necessary air quality permits for such construction as of (the effective date of this rule); or

(c) the major source has been excluded from the requirements of 42 USC 7412(g) under 40 CFR 63.40(c), (e) or (f).

(4) Unless granted a 112(g) exemption under (6) below, at least 180 days prior to beginning actual construction, an owner or operator who constructs a major source of HAP shall apply to the department for a notice of MACT approval. The application must be made on forms provided by the department, and must include all information required under 40 CFR 63.43(e).

(5) When acting upon an application for a notice of MACT approval, the department shall comply with the principles of MACT determination specified in 40 CFR 63.43(d).

(6) The owner or operator of a new process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, may apply to the department for a 112(g) exemption, if the process or production unit meets the criteria contained in 40 CFR 63.41 [definition of "construct a major source" (2)(i) through (vi)]. Application must be made on forms provided by the department, at least 180 days prior to beginning actual construction. The application must include such information as may be necessary to demonstrate that the process of production unit meets the criteria referenced herein.

(7) As further described below, and except as expressly modified by this rule, the procedural requirements of Chapter 6, subchapter 1 apply to an application for a notice of MACT approval or 112(g) exemption. For the purpose of this rule:

(a) all references in applicable provisions of Chapter 6, subchapter 1 to "permit", or "air quality permit" mean "notice of MACT approval" or "112(g) exemption," as appropriate;

(b) all references in applicable provisions of Chapter 6, subchapter 1 to "new or altered source" mean "major source of HAP."

(8) The following rules govern the application, review and final approval or denial of a notice of MACT approval or 112 (g) exemption: Rules 5.112, 6.103(2), 6.103(4)-(7), 6.106, 6.107(1) and 6.107(6);

(9) The department shall notify the applicant in writing of any final approval or denial of an application for a notice of MACT approval or 112(g) exemption.

(10) A notice of MACT approval must contain the elements specified in 40 CFR 63.43(g). The notice expires if fabrication, erection, installation or reconstruction has not commenced within 18 months of issuance, except that the department may grant an extension which may not exceed an additional 12 months.

(11) An owner or operator of a major source of HAP that receives a notice of MACT approval or a 112(g) exemption from the department shall comply with all conditions and requirements contained in the notice of MACT approval or 112(g) exemption.

(12) If a MACT standard is promulgated before the date an applicant has received a final and legally effective determination for a major source of HAP subject to the standard, the applicant shall comply with the promulgated standard.

(13) The department may revoke a notice of MACT approval or 112(g) exemption if it determines that the notice or exemption is no longer appropriate because a MACT standard has been promulgated. In pursuing revocation, the department shall follow the procedures specified in Rule 6.108. A revocation under this section may not become effective prior to the date an owner or operator is required to be in compliance with a MACT standard, unless the owner or operator agrees in writing otherwise.

Subchapter 6 – Incinerators

Rule 6.601 - Minimum Standards

(1) A person may not cause or authorize to be discharged into the outdoor atmosphere from any incinerator, particulate matter in excess of 0.10 grains per standard cubic foot of dry flue gas, adjusted to twelve percent (12%) carbon dioxide and calculated as if no auxiliary fuel had been used.

(2) A person may not cause or authorize to be discharged into the outdoor atmosphere from any incinerator emissions that exhibit an opacity of ten percent (10%) or greater averaged over six consecutive minutes.

(3) An incinerator may not be used to burn solid or hazardous waste unless the incinerator is a multiple chamber incinerator or has a design of equal effectiveness approved by the department prior to installation or use.

(4) The department or Control Board shall place additional requirements on the design, testing and operation of incinerators constructed after March 20, 1992. This requirement does not apply to incinerators that burn paper waste or function as a crematorium or are in compliance with Lowest Achievable Emission Rate as defined in Rule 2.101(25) for all regulated air pollutants.

Rule 6.602 - Hours of Operation

(1) The department may, for purposes of evaluating compliance with this rule, direct that a person may not operate or authorize the operation of any incinerator at any time other than between the hours of 8:00 AM and 5:00 PM, except that incinerators that burn only gaseous materials will not be subject to this restriction.

(2) When the operation of incinerators is prohibited by the department, the owner or operator of the incinerator shall store the solid or hazardous waste in a manner that will not create a fire hazard or arrange for the removal and disposal of the waste in a manner consistent with ARM Title 17, Chapter 50, Subchapter 5.

Rule 6.603 - Performance Tests

(1) The provisions of this chapter apply to performance tests for determining emissions of particulate matter from incinerators. All performance tests must be conducted while the affected facility is operating at or above the maximum refuse charging rate at which such facility will be operated and the material burned must be representative of normal operation and under such other relevant conditions as the department shall specify based on representative performance of the affected facility. Test methods set forth in 40 CFR, Part 60, or equivalent methods approved by the department must be used.

Rule 6.604 - Hazardous Waste Incinerators

Effective March 20, 1992, a new permit may not be issued to incinerate hazardous wastes ~~as listed in ARM Title 17, Chapter 54, Subchapter 3,~~ inside the Air Stagnation Zone.

Rule 6.605 - Additional Air Quality Permit Requirements

(1) In addition to the permitting requirements of Chapter 6, subchapter 1, an application for an air quality permit for a solid or hazardous waste incinerator must include the following:

(a) A human health risk assessment protocol (hereafter "protocol") detailing the human health risk assessment procedures; and

(b) A human health risk assessment (hereafter "assessment") that shows that ambient concentrations of pollutants from emissions constitute no more than a negligible risk to the public health, safety, and welfare and to the environment.

(2) The protocol must include, at a minimum, methods used in compiling the emission inventory, ambient dispersion models and modeling procedures used, toxicity values for each pollutant, exposure pathways and assumptions, any statistical analysis applied and any other information necessary for the department to review the adequacy of the assessment.

(3) The assessment must include, at a minimum, the following:

(a) a list of potential emissions of all pollutants specified in the federal Clean Air Act Hazardous Air Pollutants List (as defined in section 112(b) of the FCAA) from the following sources;

(i) emitting unit(s) to be permitted;

(ii) existing incineration unit(s) at the facility;

(iii) new or existing emitting units solely supporting any incineration unit at the facility (such as fugitive emissions from fuel storage); and

(iv) existing units that partially support the incineration unit if the type or amount of any emissions under an existing permit will be changed. If an existing emitting unit, wholly or partially supporting the incineration facility, increases the types or amount of its emissions, so that a permit alteration is required, that portion of the emissions increase attributable to the support of the incineration facility must be considered in the human health risk assessment.

(b) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(c) an assessment of impacts of all pollutants inventoried in (a) above, except pollutants may be excluded if the department determines that exposure from inhalation is the only appropriate pathway to consider and if:

(i) the potential to emit the pollutant is less than 1.28×10^{-13} grams per second; the source has a stack height of at least 2 meters, a stack velocity of at least 0.645 meters per second, and a stack exit temperature of at least 800°F; and the stack is at least 5 meters from the property boundary; or

(ii) the ambient concentrations of the pollutants (calculated using the potential to emit; enforceable limits or controls may be considered) are less than the levels specified in ARM 17.8.770 (See Tables 1 and 2 in Appendix C).

(4) The assessment must address risks from all appropriate pathways. Incineration facilities that do not emit or emit only minute amounts of hazardous air pollutants contained in Tables 3 or 4 in Appendix C need only address impact from the inhalation exposure pathway and may use a department supplied screening model to assess human health risk.

(5) The assessment must be performed in accordance with accepted human health risk assessment practices, or state or federal guidelines in effect when the assessment is performed, and must address impacts on sensitive populations. The human health risk must be calculated using the source's potential to emit. Enforceable limits or controls may be considered. The department may approve alternative procedures if site-specific conditions warrant.

(6) The department may impose additional requirements for the assessment, on a case-by-case basis, if the department reasonably determines that the type or amount of material being incinerated, the proximity to sensitive populations, short-term emissions variations, acute health impact, or the local topographical or ventilation conditions require a more detailed assessment to adequately define the potential public health impact. Additional requirements for the assessment may include, but are not limited to, specific emission inventory procedures for determining emissions from the incineration facility, requiring use of more sophisticated air dispersion models or modeling procedures and consideration of additional exposure pathways.

(7) The department shall include a summary of the protocol in the permit analysis. The summary must clearly define the scope of the assessment, must describe the exposure pathways used and must specify any pollutants identified in the emission inventory that were not required to be included in the assessment. The summary must also state whether, and to what extent, the impacts of existing emissions, or the synergistic effect of combined pollutants, were considered in the final human health risk level calculated to determine compliance with the negligible risk standard. The summary must also state that environmental effects unrelated to human health were not considered in determining compliance with the negligible risk standard, but were evaluated in determining compliance with all applicable rules or requirements requiring protection

of public health, safety and welfare and the environment.

Subchapter 7 – Wood Waste Burners

Rule 6.701 - Opacity Limits

A person may not cause or authorize to be discharged into the outdoor atmosphere from any wood-waste burner any emissions that exhibit an opacity of twenty percent (20%) or greater averaged over six (6) consecutive minutes. The provisions of this section may not be exceeded for more than sixty (60) minutes in eight consecutive hours for building of fires in wood-waste burners.

Rule 6.702 - Operation

(1) A thermocouple and a recording pyrometer or other temperature measurement and recording device approved by the department must be installed and maintained on each wood-waste burner. The thermocouple must be installed at a location near the center of the opening for the exit gases, or at another location approved by the department.

(2) A minimum temperature of 700ºF must be maintained during normal operation of all wood-waste burners. A normal start-up period of one (1) hour is allowed during which the 700ºF minimum temperature does not apply. The burner must maintain 700ºF operating temperature until the fuel feed is stopped for the day.

(3) The owner or operator of a wood-waste burner shall maintain a daily written log of the wood-waste burner's operation to determine optimum patterns of operations for various fuel and atmospheric conditions. The log must include, but not be limited to, the time of day, draft settings, exit gas temperature, type of fuel, and atmospheric conditions. The log or a copy of it must be submitted to the department within ten (10) days after it is requested.

Rule 6.703 - Fuels

(1) A person may not use a wood-waste burner for the burning of other than normal production process wood-waste transported to the burner by continuous flow conveying methods.

(2) Materials that cannot be disposed of through outdoor burning, as specified in Rule 7.103 (1), (2), (4) and (5), may not be burned in a wood-waste burner.

CHAPTER 7
OUTDOOR BURNING

Rule 7.101 - Definitions

For the purpose of this subchapter the following definitions apply:

(1) "Air Curtain Burner" means an engineered apparatus consisting of a manufactured, refractory walled firebox equipped with a blower and manifold to create an air curtain over the box.

(2) "Air Curtain Destructor" means a trailer-mounted air curtain incineration system that requires a pit or earthen trench that functions as a firebox. The air curtain incineration system consists of a power plant, mechanical drive system, blower fan and fuel tank. In order to be considered an air curtain destructor, the pit or trench must be constructed to manufacturer's specifications.

(~~1~~3) "Airshed Group" means the Montana-Idaho Interstate Airshed Group.

(~~2~~4) "Best Available Control Technology (BACT)" means those methods of controlling pollutants from an outdoor burning source that limit emissions to the maximum degree achievable, as determined by the department on a case-by-case basis taking into account impacts on energy use, the environment, and the economy, as well as other costs, including cost to the source. Such methods may include the following: burning during seasons and periods of good or excellent ventilation, using dispersion forecasts and predictive modeling to minimize smoke impacts, limiting the amount of burning at any one time, using burning techniques that minimize smoke production, minimizing dirt in piles and minimizing moisture content of target fuels, ensuring adequate air to fuel ratios, prioritizing burns as to air quality impact and assigning control techniques accordingly, and promoting alternative uses of materials to be burned. BACT includes but is not limited to following all conditions of the outdoor burning permits and all restrictions ~~listed on the outdoor burning hotlines maintained~~announced -by the department. For members of the Airshed Group, BACT includes but is not limited to following all restrictions called by the Monitoring Unit and DEQ.

(~~3~~5) "Bonfire" means a fire, generally larger than two feet in diameter, conducted for a festival or by a school, a non-profit organization, a government entity, an association or religious organization for the purpose of celebrating a particular organization-related event.

(~~4~~6) "Christmas Tree Waste" means wood waste from commercially grown Christmas trees left in the field where the trees were grown, after harvesting and on-site processing.

(~~5~~7) "Essential Agricultural Outdoor Burning" means any outdoor burning conducted on a farm or ranch to:
(a) eliminate excess vegetative matter from an irrigation ditch when no reasonable alternative method of disposal is available;

(b) eliminate excess vegetative matter from cultivated fields when no reasonable alternative method of disposal is available;

(c) improve range conditions when no reasonable alternative method is available; or

(d) improve wildlife habitat when no reasonable alternative method is available.

(~~6~~8) "Impact Zone M" means the area defined by:
T11N R17W Sections 1 through 6, 7 through 11, 17 through 18;
T11N R18W Sections 4 through 8, 17 through 20, 30 through 33;
T11N R19W Sections 1 through 36;
T11N R20W Sections 1 through 18, 20 through 29, 32 through 36;
T11N R21W Sections 1 through 13
T11N R22W Sections 1, 2, 11, 12;
T12N R16W Sections 18 through 20, 29 through 32;
T12N R17W Section 2 through 11, 13 through 36;
T12N R18W Sections 1 through 26, 28 through 33, 36;

T12N R19W Sections 1 through 36;
T12N R20W Sections 1 through 36;
T12N R21W Sections 1 through 36;
T12N R22W Sections 1, 2, 11 through 14, 23 through 26, 35, 36;
T13N R16W Sections 6,7;
T13N R17W Sections 1 through 12, 15 through 21, 28 through 33;
T13N R18W Sections 1 through 36;
T13N R19W Sections 1 through 36;
T13N R20W Sections 1 through 36;
T13N R21W Sections 1 through 36;
T13N R22W Sections 1, 2, 11 through 14, 24, 25, 36;
T14N R16W Sections 18, 19, 30, 31;
T14N R17W Sections 5 through 8, 13 through 36;
T14N R18W Sections 1 through 36;
T14N R19W Sections 1 through 36;
T14N R20W Sections 1 through 36;
T14N R21W Sections 1 through 36;
T14N R22W Sections 1, 2, 11 through 14, 22 through 27, 34 through 36;
T15N R18W Sections 7 through 11, 14 through 23, 26 through 35;
T15N R19W Sections 7 through 36;
T15N R20W Sections 7 through 36;
T15N R21W Sections 9 through 16, 20 through 36;
T15N R22W Section 36; as shown on the map in Appendix A.

(~~7~~9) "Major Outdoor Burning Source" means any person conducting outdoor burning that within Missoula County will emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated under this Program, except hydrocarbons.

(~~8~~10) "Minor Outdoor Burning Source" means any person conducting outdoor burning that is not a major outdoor burning source.

(~~9~~11) "Outdoor Burning" means combustion of material outside with or without a receptacle, with the exception of small recreational fires burning clean wood or gaseous fuel, construction site heating devices using liquid or gaseous fuels to warm workers or equipment, safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, or burning in a furnace, multiple chamber incinerator or wood waste burner.

(~~10~~12) "Prescribed Wildland Outdoor Burning" means any planned outdoor burning, either deliberately or naturally ignited, that is conducted on forest land or relatively undeveloped rangeland to:
(a) improve wildlife habitat;

(b) improve range conditions;

(c) promote forest regeneration;

(d) reduce fire hazards resulting from forestry practices, including reduction of log deck debris when the log deck is close to a timber harvest site;

(e) control forest pests and diseases; or

(f) promote any other accepted silvicultural practices.

(~~11~~13) "Recreational Fire" means a small, attended fire~~,~~ that does not exceed two feet in diameter. If the primary purpose of the fire is to dispose of the material being burned, it is not considered a recreational fire, regardless of size.

(~~12~~14) "Trade Waste" means waste material resulting from construction or operation of any business, trade, industry, or demolition project, including wood products industry wastes such as sawdust, bark, peelings,

chips, shavings, and cull wood. Trade wastes do not include wastes generally disposed of by essential agricultural outdoor burning, prescribed wildland outdoor burning or Christmas tree waste outdoor burning, as defined in this rule.

(~~13~~15) "Treated Wood" means wood that has had any foreign material added to it, including, but not limited to paper, glues, paints, resins, chemicals, stains and plastics.

Rule 7.102 - Outdoor Burning Permits Required

(1) A person may not cause or allow outdoor burning unless ~~he has~~they have a valid outdoor burning permit from the department or its authorized agent except as provided in (3) of this rule.

(2) The department may place any reasonable requirements in an outdoor burning permit to reduce emissions, minimize the impacts of air pollutants or protect the public health or safety, and the person or agency conducting the burn shall adhere to those conditions.

(3) (a) While the Airshed Group's Monitoring Unit is operating, ~~-~~Major Outdoor Burning Sources who are members of the Airshed Group may satisfy the permit requirements in (1) of this rule by having a valid burning permit issued by DEQ pursuant to ARM 17.8.610. To burn when the Monitoring Unit is not in operation, Major Outdoor Burning Sources shall have a burning permit issued by the department.

(b) Notwithstanding (a) of this rule, the department may require a Major Outdoor Burning Source to have an outdoor burning permit issued by the department for burns conducted any time of the year, if it determines such a permit is necessary to protect air quality in Missoula County or enforce the provisions of this Program.

(c) The department may enforce all the provisions of Rule 7.107 regardless of what permit is in effect.

Rule 7.103 - Materials Prohibited

(1) A person may not dispose of any material other than natural vegetation and untreated lumber through outdoor burning, unless otherwise allowed in this Chapter.

(2) Waste moved from the premises where it was generated, except as permitted in Rule 7.110 (conditional outdoor burning) and Rule 7.112 (emergency outdoor burning), may not be disposed of through outdoor burning.

(3) Trade wastes, except as permitted in Rule 7.110 (conditional outdoor burning) and Rule 7.112 (emergency outdoor burning), may not be disposed of through outdoor burning.

(4) Christmas tree wastes, except as permitted in Rule 7.111 (Christmas tree waste outdoor burning) may not be disposed of through outdoor burning.

(5) Standing or demolished structures, except as permitted in Rule 7.109 (firefighter training), Rule 7.110 (conditional outdoor burning) or Rule 7.113 (commercial film production), may not be disposed of through outdoor burning.

(6) Inside the Missoula Air Stagnation Zone, piles of grass or deciduous leaves may not be disposed of through outdoor burning.

Rule 7.104 - Burning Seasons

(1) The following categories of outdoor burning may be conducted during the entire year:
~~(a) prescribed wildland burning;~~

(~~b~~a) fire fighter~~s~~ training;

(~~c~~b) emergency outdoor burning;

(~~d~~c) for the purpose of thawing frozen ground to allow excavation of utilities.

(~~e~~d) ceremonial bonfires

(2) Commercial film production outdoor burning may be conducted only during the months of March through November.

(3) Essential agricultural burning and conditional outdoor burning may only be conducted March through October.

(4) Prescribed wildland burning may only be conducted March through November, except as allowed under Rules 7.106(2) and 7.107(6).

(~~4~~5) Outdoor burning other than those categories listed in Sections (1) – (3) above may only be conducted March through August.

Rule 7.105 - Restricted Areas

(1) Outdoor burning is not allowed within the Missoula City limits, or in areas surrounded by the City except when:
(a) it occurs on parcels of at least one acre under single ownership; or

(b) the department determines outdoor burning is necessary:
(i) to eliminate a fire hazard that cannot be abated by any other means;
(ii) ~~-~~ for fire fighter training;
(iii) ~~-~~for thawing frozen ground to allow excavation of utilities;
(iv) to eliminate hazards in an emergency;
(v) for bonfires as allowed by the Missoula Municipal Code.

(2) Within Impact Zone M, a person may not conduct prescribed wildland burning except when good or excellent dispersion is forecast for the entire period of expected smoke generation. ~~Prescribed wildland burning is not allowed in "Impact Zone M" December 1 through the end of February, except as allowed under Rule 7.106(2).~~

(3) The department may place restrictions on outdoor burning by elevation or area for the purpose of managing air quality. The department shall announce such restrictions on the department's outdoor burning website and through the major and minor burners' burn approval systems~~hotlines~~.

Rule 7.106 - Minor Outdoor Burning Source Requirements

(1) A minor outdoor burning source shall:
(a) conform with BACT;

(b) comply with all outdoor burning rules, except Rule 7.107;

(c) comply with any requirements or regulations relating to outdoor burning established by any public agency responsible for protecting public health and welfare, or for fire prevention or control; and

(d) activate their permit prior to burning and adhere to the restrictions posted on the outdoor burning permit system

(2) If a minor outdoor burning source desires to conduct prescribed wildland outdoor burning during December, January, or February, it shall:
(a) submit a written request to the department, demonstrating that the burning must be conducted prior to reopening of outdoor burning in March; and

(b) receive specific burn authorization from the department prior to burning~~receive specific permission for the burning from the department;~~.

Rule 7.107 - Major Outdoor Burning Source Requirements

(1) An application for a Major Source Outdoor Burning Permit must be accompanied by the appropriate permit fee and must contain the following information:
(a) a legal description or detailed map showing the location of each planned site of outdoor burning.

(b) the elevation of each site.

(c) the average fuel loading or total fuel loading at each site.

(d) the method of burning to be used at each site.

(2) An application for a Major Source Outdoor Burning Permit must be accompanied by proof of public notice, consistent with Rule 7.114.

(3) A major outdoor burning source shall:
(a) conform with BACT;

(b) adhere to the conditions in the outdoor burning permit issued to it by the department, or, when applicable, by DEQ; and

(c) adhere to ~~the restrictions posted on the outdoor burning hotlines~~restrictions announced by the department;

(d) comply with all restrictions issued by the Airshed Group Monitoring Unit;

(e) conduct outdoor burning in such a manner such that:
(i) emissions from the burn do not endanger public health or welfare;
(ii) emissions from the burn do not cause or contribute to a violation of a Montana or National Ambient Air Quality Standards; and
(iii) no public nuisance is created.

(4) To burn in a manner other than that described in the application for burning permit, the source shall submit to the department, in writing or by telephone, a request for a change in the permit, including the information required by Section (1) (a)-(d) above, and must receive approval from the department.

(5) A major source outdoor burning permit is valid for one year or for another time frame as specified in the permit by the department.

(6) If a major outdoor burning source desires to conduct prescribed wildland outdoor burning during December, January, or February, it shall:
(a) submit a written request to the department, demonstrating that the burning must be conducted prior to reopening of outdoor burning in March; and

(b) receive specific burn authorization from the department prior to burning.

Rule 7.108 - Bonfire Permits
The department may issue a permit for a bonfire if:
(1) The time and location is approved in writing by the appropriate fire department and law enforcement agency;

(2) No public nuisance will be created; and

(3) The materials to be burned are limited to untreated cordwood, untreated dimensional lumber and woody vegetation.

Rule 7.109 - Fire Fighter Training Permits
(1) The department may issue a fire fighter training outdoor burning permit for burning materials that would otherwise be prohibited by Rule 7.103, if:

(a) the fire will be restricted to a building or structure, a permanent training facility, or other appropriate training site, but not a solid waste disposal site;

(b) the material to be burned will not be allowed to smolder after the training session has ended;

(c) no public nuisance will be created;

(d) all known asbestos-containing material has been removed;

(e) asphalt shingles, flooring material, siding, and insulation that might contain asbestos have been removed, unless samples have been analyzed by a certified laboratory and shown to be asbestos free;

(f) all prohibited material that can be removed safely and reasonably has been removed;

(g) the burning accomplishes a legitimate training need and clear educational objectives have been identified for the training;

(h) burning is limited to that necessary to accomplish the educational objectives;

(i) the training operations and procedures are consistent with nationally accepted standards of good practice; and

(j) emissions from the outdoor burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(2) A firefighter training permit is valid for only one location.

(3) The department shall inspect the structure or materials to be burned prior to the training to reasonably ensure compliance with this rule.

(4) An application for a fire fighter training outdoor burning permit must be made on a form provided by the department. The applicant shall provide adequate information for the department to determine whether it satisfies the requirements of this rule for a permit.

(5) An application for a firefighter training outdoor burning permit must be accompanied by proof of public notice, consistent with Rule 7.114.

Rule 7.110- Conditional Outdoor Burning Permits

(1) The department may issue a conditional outdoor burning permit to dispose of:

(a) Untreated wood and untreated wood by-product trade wastes by any business, trade, industry;

(b) Untreated wood from a demolition project; or

(c) Untreated wood waste at a licensed landfill site, if the department determines that:

(i) the outdoor burning will occur at an approved burn site, as designated in the solid waste management system license issued by the DEQ; and

(ii) the pile is inspected by the department or its designated representative and only natural vegetation and clean, untreated lumber are present.

(d) Natural vegetation generated off-site, if the department determines that:

(i) the outdoor burning will occur in an air curtain burner or an air curtain destructor;

(ii) the use of the air curtain burner or air curtain destructor is temporary; and

(iii) the material being disposed of is not trade waste.

(2) The department may issue a conditional outdoor burning permit only if it determines that:

(a) alternative methods of disposal would result in extreme economic hardship to the applicant;

(b) emissions from outdoor burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard; and

(c) with the exception of burns permitted under 7.110(1)(d), the outdoor burning will not occur within the Air Stagnation Zone. (see Appendix A)

(3) The department shall be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

(4) Conditional outdoor burning must conform with BACT.

(5) A permit for burning trade waste is a temporary measure to allow time for the generator to develop alternative means of disposal.

(6) A permit issued under this rule is valid for the following periods:
(a) Untreated wood and untreated wood by-products trade waste – up to 1 year; and

(b) Untreated wood waste at licensed landfill sites - single burn~~.~~; and

(c) Natural vegetation disposed of in an air curtain burner or air curtain destructor – up to 1 year.

(7) For a permit granted under Section (1)~~(a)~~ above, the source may be required, prior to each burn, to receive approval from the department to ensure that good dispersion exists and to assign burn priorities if other sources in the area request to burn on the same day. Approval may be requested by contacting the department.

(8) An application for a conditional outdoor burning permit must be accompanied by the appropriate application fee. The application must be made on a form provided by the department and must provide adequate information for the department to determine whether the application satisfies the requirements for a conditional air quality outdoor burning permit contained in this rule.

(9) Proof of publication of public notice, consistent with Rule 7.114, must be submitted to the department before an application is considered complete.

Rule 7.111 - Christmas Tree Waste Outdoor Burning Permits

(1) The department may issue an outdoor burning permit to allow burning of Christmas tree waste if emissions from the outdoor burning will not:
(a) endanger public health or welfare;

(b) cause or contribute to a violation of any Montana or federal ambient air quality standard; or

(c) cause a public nuisance.

(2) Christmas tree waste outdoor burning must comply with BACT.

(3) Christmas Tree Waste permits are valid for up to one year as specified in the permit issued by the department.

(4) An application for a Christmas Tree Waste Outdoor Burning permit must be accompanied by the appropriate application fee. The application must be made on a form provided by the department and must include adequate information for the department to determine whether the requirements of this rule are satisfied.

(5) An application for a Christmas Tree Waste Outdoor Burning permit must be accompanied by proof of public notice, consistent with Rule 7.114.

Rule 7.112 - Emergency Outdoor Burning Permits

(1) The department may issue an emergency outdoor burning permit to allow burning of a substance not otherwise approved for burning if the applicant demonstrates that the substance to be burned poses an immediate threat to public health and safety, or plant or animal life, and that no alternative method of disposal is reasonably available.

(2) The department may authorize emergency outdoor burning, upon receiving the following information:
(a) facts establishing that alternative methods of disposing of the substance are not reasonably available;

(b) facts establishing that the substance to be burned poses an immediate threat to human health and safety or plant or animal life;

(c) the legal description or address of the site where the burn will occur;

(d) the amount of material to be burned;

(e) the date and time of the proposed burn;

(f) the date and time that the spill or incident giving rise to the emergency was first noticed; and

(g) a commitment to pay the appropriate permit application fee within ten (10) working days of permit issuance.

(3) Within ten (10) working days of receiving oral authorization to conduct emergency outdoor burning, the applicant shall submit to the department, in writing, the information required in (2)(a) – (f) of this rule and the appropriate permit application fee.

Rule 7.113 - Commercial Film Production Outdoor Burning Permits

(1) The department may issue a commercial film production outdoor burning permit for burning prohibited material as part of a commercial or educational film or video production for motion pictures or television. Use of pyrotechnic special effects materials, including bulk powder compositions and devices, smoke powder compositions and devices, matches and fuses, squibs and detonators, and fireworks specifically created for use by special effects pyrotechnicians for use in motion picture or video productions is not considered outdoor burning.

(2) Emissions from commercial film production outdoor burning may not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(3) A permit issued under this rule is valid for a single production.

(4) Outdoor burning under this rule must conform with BACT.

(5) An application for a commercial film production outdoor burning permit must be accompanied by the appropriate application fee. The application must be made on a form provided by the department. The applicant shall provide adequate information for the department to determine whether the application satisfies the requirements of this rule.

(6) Proof of publication of public notice, consistent with Rule 7.114, must be submitted to the department before an application is considered complete.

Rule 7.114 - Public Notice

(1) When an applicant is required by this chapter to give public notice of a permit application, the applicant shall notify the public by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published within 10 days of submittal of the application. The content of the notice must be approved by the department and must include a statement that public comments concerning the application may be submitted to the department within 20 days after publication of notice or after the department receives the application, whichever is later. A single public notice may be published for multiple applicants.

(2) The public comment period may be shortened to ten (10) days for firefighter training permits.

Rule 7.115 - Outdoor Burning Permitting Actions

(1) When the department approves or denies a outdoor burning permit application that requires public notice, a person who is adversely affected by the decision may request an administrative review as provided for in Chapter 14. The request must be filed within 15 days after the department renders its decision and must include the reasons for the request. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. A request for a hearing postpones the effective date of the department's decision until the conclusion of the appeals process.

(2) The department may immediately revoke an outdoor burning permit under the following conditions:
(a) if the outdoor burning causes a public nuisance;

(b) for a violation of a condition of the permit; or

(c) for a violation of a provision of this Program.

(3) Upon revocation, the department may order a fire be immediately extinguished.

(4) Revocation of a permit may be given verbally, but must be followed with a letter stating the reasons for the revocation or suspension.

(5) An outdoor burning permit may be modified when the department or Control Board determines modifications are necessary to insure compliance with the provisions of this Program.

(6) The department shall notify the permittee in writing of any modifications to the permit.

(7) A party affected by the department's decision to revoke or modify a permit may request an administrative review as provided for in Chapter 14. However, the revocation or permit modifications remain in effect until such time as they are reversed.

(8) Outdoor burning permits are not transferable and are only valid for the location and person to which they were originally issued.

Rule 7.116 – Prohibition of recreational fires during Air Alerts and Warnings

(1) Within the Air Stagnation Zone, recreational fires burning solid fuel are prohibited during a Stage I Alert declared by the department pursuant to Rule 4.104.

(2) Within Impact Zone M, including the Air Stagnation Zone, recreational fires burning solid fuel are prohibited during a Stage II Warning, a Stage III Emergency, and a Stage IV Crisis declared by the department pursuant to Rule 4.104.

(3) When declaring an air pollution Alert or other air pollution control stage, the department shall take reasonable steps to publicize that information and to make it reasonably available to the public at least three hours before initiating any enforcement action for a violation of this section.

(4) Every person shall ensure recreational fires are not prohibited by this rule prior to having a recreational fire.

CHAPTER 8
FUGITIVE PARTICULATE

Subchapter 1 - General Provisions

Rule 8.101 - Definitions

For purpose of this Chapter, the following definitions apply:

(1) "Approved deicer" means a magnesium chloride based product or other product with similar dust suppression properties, that is approved for use by the department and the Missoula Valley Water Quality District.

(2) "Area of Regulated Road Sanding Materials" means the area defined by:
T13N R19W Sections 2,8,11,14,15,16,17,20,21,22,23,27,28,29, 32,33,34;
T12N R19W Sections 4,5,6,7; as shown on the attached map, (see Appendix A).

(3) "AASHTO" means the American Association of State and Highway Transportation Officials Test Methods.

(4) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the 1990 amendments to the Federal Clean Air Act or the Clean Air Act of Montana that would be emitted from any proposed stationary source or modification that the department, on a case by case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event may application of BACT result in emission of any pollutant that would exceed the emissions allowed by the applicable standard under 40 CFR Part 60 and 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of BACT. Such standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means which achieve equivalent results.

(5) "Block pavers" means a block or brick made of hard, durable material designed to handle vehicle traffic. A block paver keeps vehicles off the underlying soils while allowing the growth of vegetation through spaces inside or outside the block or paver.

(6) "Bound recycled glass" means a solid, self-draining surface composed of elastomerically bound recycled glass created by bonding post-consumer glass with a mixture of resins, pigments and binding agents.

(7) "Commercial" means:
(a) any activity related to the purchase, sale, offering for sale, or other transaction involving the handling or disposition of any article, service, or commodity; or

(b) other facilities including but not limited to office buildings, offices, maintenance, recreational or amusement enterprises, churches, schools, trailer courts, apartments, and three or more dwelling units on one parcel.

(8) "Existing source" means a source that was in existence and operating or capable of being operated or had ~~a~~ an air quality permit from the department prior to February 16, 1979.

(9) "Extraordinary circumstance" means when a law officer calls for sanding of a roadway to eliminate an existing unsafe traffic situation when deicer would be inadequate or cannot be applied within a reasonable amount of time, or when the slope of a roadway or thickness of ice prevent the use of deicing materials as an adequate method of providing a safe driving surface within a reasonable amount of time.

(10) "Fugitive particulate" means any particulate matter discharged into the outdoor atmosphere that is not discharged from the normal exit of a stack or chimney for which a source test can be performed in

accordance with Method 5 (determination of particulate emissions from stationary sources), Appendix A, Part 60.275 (Test Method and Procedures), Title 40, Code of Federal Regulations [CFR] (Revised July 1, 1977).

(11) "Industrial" means activity related to the manufacture, storage, extraction, fabrication, processing, reduction, destruction, conversion, or wholesaling of any article, substance or commodity or any treatment thereof in such a manner as to change the form, character, or appearance thereof.

(12) "Long-term parking for heavy equipment or semis" means an area where only heavy equipment or semis are parked, and these vehicles are parked there for longer than 48 hour periods. This does not include loading or unloading areas for semis.

(13) "Major arterial" means any roadway eligible for primary or urban funds from the Montana Department of Transportation.

(14) "New source" means a source that was constructed, installed or altered on or after February 16, 1979, unless the source had a permit to construct prior to February 16, 1979.

(15) "Parking lot" or "parking area" means an area where operable vehicles are parked for more than 15 days of a calendar year including but not limited to areas that contain vehicles offered for sale.

(16) "Paved" means having a minimum of two (2) inches of hot mix asphalt or four (4) inches of portland cement concrete with an appropriate base for the soil type. The requirements are for the purpose of minimizing fugitive particulate emissions and do not represent structural standards.

(17) "Private driveway" means a privately owned access or egress that serves two or fewer dwelling units.

(18) "Private road" means a privately owned access or egress that serves three or more dwelling units or that serves one or more non-residential parcels.

(19) "Public road" means a publicly owned or maintained road, a road dedicated to the public, a petitioned road or a prescriptive use road.

(20) "Reasonable precautions" means any reasonable measure to control emissions of airborne particulate matter. The department will determine what is reasonable on a case by case basis taking into account energy, environmental, economic, and other costs.

(21) "Reinforced grids" means a solid material composed of connected patterns designed to handle vehicle traffic. A reinforced grid keeps vehicles off the underlying soils while allowing the growth of vegetation through spaces built into the grid.

(22) "Required deicing zone" means the area within the City limits, bordered in the north by the northern right-of-way boundary of Interstate 90 and in the south by the southern right-of-way boundary of 39th Street and Southwest Higgins Avenue, but also including those portions of Rattlesnake Drive and Van Buren Street that lie inside the City limits.

(23) "Road" means an open way for purposes of vehicular travel including highways, streets, and alleys. A private driveway is considered a new road when its use is increased to serve more than two dwelling units or to serve one or more commercial/industrial sites.

(24) "Utility" means unoccupied equipment sites or facilities, including but not limited to communication antennas and power line right of ways.

(25) "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except bicycles and devices moved by animal power or used exclusively upon stationary rails or tracks.

Rule 8.102 - General Requirements

(1) A person may not cause or authorize the production, handling, transportation, or storage of any material unless reasonable precautions to control fugitive particulate are taken.

(2) Fugitive particulate emissions from any source may not exhibit an opacity of twenty (20) percent or greater averaged over six (6) consecutive minutes.

(3) A person may not cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired or demolished without applying all reasonable precautions to prevent fugitive particulate. The department may require reasonable measures to prevent fugitive particulate emissions, including but not limited to, paving or frequent cleaning of road, driveways, and parking lots; applying dust suppressants; applying water; planting and maintaining vegetative ground cover and using a combination of reinforced grids or block pavers with a healthy vegetative cover.

(4) Governmental agencies are subject to the same regulations as commercial enterprises in this chapter.

Rule 8.103 - Stationary Source Requirements

Within any area designated non-attainment for either the primary or secondary NAAQS person who owns or operates:

(1) An existing source of fugitive particulate shall apply reasonably available control technology (RACT);

(2) A new source of fugitive particulate that has a potential to emit less than 100 tons per year of particulate shall apply best available control technology (BACT);

(3) A new source of fugitive particulate that has a potential to emit 100 or more tons per year of particulate shall apply lowest achievable emission rate (LAER).

Rule 8.104 - Construction and Mining Sites

(1) A person in charge of a construction project or mining operation may not cause, suffer or allow dirt, rock, sand and other material from the site to be tracked out onto paved surfaces without taking all reasonable measures to prevent the deposition of the material and/or to promptly clean up the material. Reasonable measures include but are not limited to frequent cleaning of the paved roadway, paving access points, use of dust suppressants, filling and covering trucks so material does not spill in transit and use of a track out control device.

(2) Temporary roads and parking areas at active construction sites and mining operations do not need to be paved and are not subject to the permitting requirements of subchapter 2 of this Chapter. After the project(s) or mining is complete, temporary roads and parking areas must be permanently removed or closed off to traffic.

Rule 8.105 - Agricultural Exemption

The provisions of this Chapter do not apply to fugitive particulate originating from any activity or equipment associated with the use of agricultural land or the planting, production, harvesting, or storage of agricultural crops. (This exemption does not apply to the processing of agricultural products by a commercial business).

Subchapter 2 - Paving Requirements in the Air Stagnation Zone

Rule 8.201 - Permits Required

(1) After September 16, 1994, a person may not construct or cause to be constructed a new road, private or commercial driveway or parking lot in the Air Stagnation Zone without having a permit from the department except as provided for in Rule 8.104(2), 8.105 and 8.202(4).

(2) The applicant shall supply plans for the proposed construction at the time of the application for the permit. Plans must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record. The department may require that the plans include the following information:

(a) A complete legal description of the affected parcels and a location map of the proposed construction area.

(b) A scaled plan-view drawing that includes all existing and proposed property boundaries, structures, roads, parking areas and adjoining exterior roads. Proposed construction must be clearly labeled.

(c) The width of proposed roads and driveways and dimensions of proposed parking areas.

(d) The thickness of the base material and the pavement to be used on the proposed construction.

(e) A description of the intended uses of the road, driveway or parking lot, including but not limited to the estimated number and type of vehicles using the road, parking lot or driveway.

(f) A description of adjoining exterior roads, e.g. paved or unpaved, public or private.

(g) Any additional information the department may require to evaluate the application prior to the issuance of a permit.

Rule 8.202 - New Roads in the Air Stagnation Zone

(1) After September 16, 1994, all new roads in the Air Stagnation Zone must be paved, except as provided in (3) through (5) of this rule and in Rule 8.104.

(2) New public and private roads must be paved within 2 years (730 days) after road construction begins or final plat approval, whichever comes first, except that new private roads serving commercial and industrial sites must be paved prior to occupancy.

(3) The department may allow temporary occupancy of a building or use of a road serving a commercial or industrial site before the road is paved if weather prevents paving before occupancy or use. Such an extension may not exceed six months.

(4) Roads used solely for utilities, or solely for agricultural or silvicultural purposes are exempt from paving requirements of Subchapter 8.2, but are subject to dust abatement measures to prevent particulate matter from becoming airborne. If the use of a road changes so that it is no longer used solely for utilities, or solely for agricultural or silvicultural purposes, the road will be considered a new road and all paving regulations pertinent to the new uses on the road must be met.

(5) Temporary roads at landfills do not have to be paved or permitted, but are subject to dust abatement measures. For this rule, a road at a landfill is considered temporary if it exists in the same location less than three years.

Rule 8.203 - New Parking Areas in the Air Stagnation Zone

(1) After September 16, 1994, new public and private parking areas must be paved prior to occupancy, except as provided in (2)-(4) of this rule.

(2) The department may allow temporary occupancy of a building before the parking areas are paved if weather prevents paving before occupancy. Such an extension may not exceed six months.

(3) Exceptions.

(a) The following areas do not have to be paved if they are constructed in accordance with Section (5) of this rule:

(i) Long term parking areas for heavy equipment and semi trucks where the vehicles will be parked for longer than 48 hours at a time and no other vehicular traffic is allowed. (This exemption does not apply to sales lots or loading areas.)

(ii) Long term parking areas for vehicles that will be parked for extended periods of time, if no other vehicular traffic is allowed and if no more than fifteen (15) vehicles travel in or out of the area per day averaged over any three consecutive days. (This exemption does not apply to sales lots for vehicles)

(iii) Display areas for heavy equipment, where no other vehicles will be displayed or offered for sale and no other vehicular traffic is allowed.

(b) At licensed RV parks, accesses to parking spots must be paved, but parking spots for RVs need not be paved if:

(i) they are constructed in accordance with ~~4~~ 5 (a) of this rule; or

(ii) they are constructed using reinforced grids and a healthy vegetative cover is maintained that can handle traffic.

(c) Parking areas used exclusively for the sale or display of light tractors and implements with no other vehicular use need not be paved if:

(i) the area is mowed and maintained with a healthy stand of vegetation adequate to be an effective dust suppressant; or

(ii) the area meets the requirements of ~~4~~ 5 (a) of this rule.

(d) Parking areas used exclusively for outdoor recreational/entertainment facilities including, but not limited to, outdoor theatres, fairs or athletic fields, may use vegetation or reinforced grids with vegetation as an alternative to paving if the following conditions are met.

(i) New access road(s) for the parking area will be paved.

(ii) The parking area will be used less than 61 days per calendar year.

(iii) The department has approved a construction plan showing:

(A) that the parking area soils can support a vegetative cover and the proposed vehicular traffic;

(B) that vegetation able to survive and maintain ground cover with the proposed vehicle use is present or that appropriate vegetation will be planted and established prior to use of the parking area; and

(C) that an irrigation system able to maintain the vegetative cover will be installed.

(iv) The department has approved a maintenance plan that:

(A) states that vehicles will not use the parking area when soil conditions are muddy or excessive damage to the vegetation will occur;

(B) states that vehicles will not use the parking area when carry out of dirt or dust onto surrounding paved surfaces will occur;

(C) states that the parking area will be blocked off with a physical barrier that will prevent vehicle access when the parking area is not in use; and

(D) explains how the ground cover vegetation will be maintained by the appropriate use of irrigation, fertilizer, aeration and other necessary measures.

(E) may include rotation of vehicle use around the parking area to reduce impacts on the soil and vegetation. Any use of the parking area counts as one day of use for the entire parking area.

(e) The department may order ~~that~~ an area that qualifies for one of the above exemptions be paved if:

(i) the area is not constructed or maintained as required by this rule.

(ii) particulate emissions exceed those typical of a clean paved surface; or

(iii) carryout of dirt or dust onto surrounding paved surfaces occurs.

(f) If the use of an area changes so that an exemption no longer applies, the area must meet all regulations for new construction applicable to the new uses of the area.

(4) The department may allow self-draining solid surfaces including, but not limited to, block pavers and bound recycled glass for parking areas provided the following conditions are met.

(i) The surface is rated for the vehicular traffic loads projected for that parking area

(ii) Fugitive emissions from the surface will not exceed those from a clean, paved parking area.

(iii) The surface is cleaned regularly to prevent fugitive particulate

(iv) If the surface is disturbed or destroyed it must be paved or rebuilt before continued use.

(5) Construction Specifications for Exemptions.

(a) Unless otherwise specified in this rule, unpaved parking and display areas must consist of a suitable base material topped with a minimum of four inches of ¾ inch minus gravel, that meets the following specifications:

(i)The material must consist of hard, durable particles or fragments of slag, stone or gravel screened and crushed to the required size and grading specified here.

Sieve Designation	Percent Passing, by Weight
¾ inch	100
No. 4	30 – 60
No. 10	20 - 50
No. 200	less than 8

(ii) That portion of the material passing a No. 40 sieve must have a plasticity index of 4 or less, as determined by AASHTO T-91.

(b) To minimize carry-out of material onto the access road, pavement must be placed between unpaved parking areas allowed in (3)(a) of this rule and the paved or unpaved access road as follows:

(i) At least 60 linear feet of paved surface of adequate width must be placed between an unpaved long term parking area for heavy equipment and semi-trucks and the access road. This paved surface must be placed and used so that heavy equipment and semi-trucks cross 60 feet of paved surface before entering the access road.

(ii) At least 20 linear feet of paved surface of adequate width must be placed between unpaved long term parking areas allowed in (3)(a)(ii) of this rule and the access road. This paved surface must be placed and used so that vehicles cross 20 feet of paved surface before entering the access road.

(iii) The paved surface must begin at the edge of the access road.

Rule 8.204 - New Driveways in the Air Stagnation Zone

(1) After September 16, 1994, before occupancy of a residential unit, new private driveways accessing a paved road must be paved or covered with a self-draining solid surface as provided by part (4) of this rule to a minimum of twenty (20) feet back from the paved road or to the outside boundary of the right of way, whichever is longer.

(2) The department may allow temporary occupancy of a residential unit before the driveway is paved if weather prevents paving before occupancy. Such an extension may not exceed six months.

(3) Private driveways accessing an existing unpaved road do not have to be paved, but must meet the requirements of Rule 8.205.

(4) The department may allow a self-draining solid surface including, but not limited to, block pavers and bound recycled glass in lieu of pavement provided the following conditions are met.

(i) The surface is rated for the vehicular traffic loads projected for that driveway

(ii) Fugitive emissions from the surface will not exceed those from a clean, paved driveway.

(iii) The surface is cleaned regularly to prevent fugitive particulate

(iv) If the surface is disturbed or destroyed it must be paved or rebuilt before continued use.

Rule 8.205 - Unpaved Access Roads

(1) The department may not issue a permit for a new road, commercial site, industrial site, or private driveway in the Air Stagnation Zone accessed by an unpaved road unless:

(a) a waiver of the option to protest an RSID or SID for the paving of the unpaved access road has been recorded at the Clerk and Recorder's Office for the parcel; or

(b) the owner of the real property accessed by the unpaved road executes a deed restriction waiving the option to protest any RSIDs or SIDs for the paving of the unpaved access road using the language set forth below.

> I/We, the undersigned, hereby certify that I/we are the owners of the real property located at (legal description) and hereby waive any option to protest an RSID or SID affecting said property for the purpose of financing the design and construction of a public paved road accessing said property. Further, my/our signatures on this waiver may be used in lieu of my/our signature(s) on an RSID or SID petition for the creation of one or more RSID's or SID petitions for the purpose of financing the design and construction of a public paved road accessing the above-described property.
>
> This waiver runs with the land and is binding on the transferees, successors, and assigns of the owners of the land described herein. All documents of conveyance must refer to and incorporate this waiver.

(2) In the Air Stagnation Zone, property owner who is subdividing land that contains parcels accessing an unpaved road, or whose primary access is an unpaved road, shall waive the option to protest an RSID or SID that upgrades and paves the road and shall include the language set forth in (1)(b)above on the plat.

Rule 8.206 - Maintenance of Pavement Required

(1) All paved roads, driveways, storage areas and parking lots within the Air Stagnation Zone must be cleaned and maintained regularly to prevent fugitive particulate.

(2) Any existing paved surface that is disturbed or destroyed must be re-paved before continued use.

Rule 8.207 - Paving Existing Facilities in the Air Stagnation Zone

(1) The department may require any person owning or operating a commercial establishment which is located on a publicly owned or maintained road which is used by more than 200 vehicles per day averaged over any 3-day period to submit a plan which provides for paving and restricting traffic to paved surfaces for any areas used by said commercial establishment for access, egress, and parking except where said access, egress, and parking is seasonal and intermittent and the area in which said access, egress and parking is located is not in violation of Ambient Air Quality Standards as listed in ARM 17.8.201 - 17.8.230. The plan must include drawings and other information that the department may require to indicate the adequacy of the plan. The plan must provide reasonable time for construction of paved roads or structures limiting traffic to paved surfaces, but this time may not exceed one year from the date of submittal to the department.

(2) The department may require any person owning, leasing, or managing property containing a road or thoroughfare which is used by more than 50 vehicles per day, averaged over any three day period, to submit a plan which provides for paving or for restricting traffic to paved surfaces. Roads located in areas that do not violate the ambient air quality standards (ARM 17.8.201 - 17.8.230), and which are used seasonally and intermittently are exempt from this requirement. The plan must include drawings and other information that the department may require. A reasonable time will be permitted for the construction of paved roads or structures limiting traffic to paved surfaces, but this time may not exceed one year from the date of submittal of the plan to the department unless an extension is granted by the Control Board.

Rule 8.208 – Paving Alternative but Equivalent Areas

(1) With approval by the department, when there will be a public health benefit, a person may pave an alternative area to the paving required by Rule 8.202 and Rule 8.203 of this Subchapter. The alternative area paved must be of equal or greater square footage and equal or greater vehicle usage when compared to the paving required by Rule 8.202 and Rule 8.203.

Subchapter 3 - Road Maintenance Inside the Area of Regulated Road Sanding Materials

Rule 8.301 - Deicer Required

(1) When the ambient temperature is above 10°F. a person may not apply street sanding materials other than an approved deicer to those public roadways in the required deicing zone, except under extraordinary circumstances.

Rule 8.302 - Durability Requirements

(1) A person may not place any sanding or chip sealing materials upon any road or parking lot located inside the area of regulated road sanding materials that has a durability of less than or equal to 80 as defined by AASHTO T-210 procedure B and a silt content passing the #200 sieve of greater than 2.5% as defined by AASHTO T-27 and T-11.

Rule 8.303 - Street Sweeping Requirements

(1) Between December 1 and March 31, when the paved road surface is above 32°F for longer than four hours, political subdivisions shall clean the center line and areas immediately adjacent to the travel lane of any major arterials they maintain inside the area of regulated road sanding materials.

(2) The Control Board hereby incorporates Chapter 10.50 of the Missoula Municipal Codes which requires street sweeping.

Rule 8.304 - Contingency Measure

(1) The area of regulated road sanding materials defined by Rule 8.101(2) is expanded to include Section 1, T12N R20W, Sections 5 and 24, T13N R19W, Sections 19, 24, 25, 30, 31 and 36, T13N R20W.

CHAPTER 9
SOLID FUEL BURNING DEVICES

Subchapter 1 – General Provisions

Rule 9.101 - Intent

The intent of this rule is to regulate and control the emissions of air pollutants from solid fuel burning devices in order to further the policy and purpose declared in Chapter 1.

Rule 9.102 - Definitions

For the purpose of this rule the following definitions apply:

(1) "Burning season" means from the first day of July through the last day of June of the following year.

(2) "Alert permit" means an emission permit issued by the department to operate a solid fuel burning device during an air pollution Alert and during periods when the air stagnation plan is not in effect. Solid fuel burning devices must meet Lowest Achievable Emission Rate to qualify for an Alert class emissions permit.

(3) "Central heater" means a fuel-burning device designed to burn wood or wood pellet fuel that warms spaces other than the space where the device is located, by the distribution of air heated by the furnace through ducts or liquid heated in the device and distributed typically through pipes. Unless otherwise specified, these devices include, but are not limited to, residential forced-air furnaces (small and large) and residential hydronic heaters that burns less than 1,000,000 BTU's per hour.

(~~3~~4) "Install" means to put in position for potential use, and includes bringing a manufactured home or recreational vehicle containing a solid fuel burning device into the County.

(~~4~~5) "Installation permit" means an emissions permit issued by the department to install and operate a solid fuel burning device within the County.

(~~5~~6) "EPA method" means 40 CFR Part 60, Subpart AAA~~, Sections 60.531, 60.534, and 60.535~~ or 40 CFR Part 60 Subpart QQQQ.

(~~6~~7) "Fireplace" means a solid fuel burning device with an air-to-fuel ratio of greater than thirty which is a permanent structural feature of a building. A fireplace is made up of a concealed masonry or metal flue, and a masonry or metal firebox enclosed in decorative masonry or other building materials.

(~~7~~8) "New solid fuel burning device" means any solid fuel burning device installed, manufactured, or offered for sale inside the Missoula Air Stagnation Zone after July 1, 1986 or outside the Missoula Air Stagnation Zone in Missoula County after May 14, 2010.

(~~8~~9) "Oregon method" means Oregon Department of Environmental Quality "Standard Method for Measuring the Emissions and Efficiencies of Woodstoves", Sections l through 8 and O.A.R. Chapter 340. Division 21 Sections 100, 130, 140, 145, 160, 161, 163, 164, 165.

(~~9~~10) "Pellet stove" means a solid fuel burning device designed specifically to burn pellets or other non-fossil biomass pellets that is commercially produced, incorporates induced air flow, is installed with an automatic pellet feeder, and is a free-standing room heater or fireplace insert.

(11) "Seeley Lake Wood Stove Zone" means the area defined by the Seeley Lake Wood Stove Zone map in Appendix A.

(~~10~~12) "Solid fuel burning device" means any fireplace, fireplace insert, woodstove, wood burning heater, wood fired boiler, coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking, disposal, or heating purposes, that burns less than 1,000,000 BTU's per hour.

(~~11~~13) "Sole source of heat" means one or more solid fuel burning devices that:

(a) constitute the only source of heat in a private residence for purpose of space heating, or

(b) constitutes the main source of heat in a private residence where the residence is equipped with a

heating system that is only minimally sufficient to keep the plumbing from freezing.

(~~12~~14) "Woodstove" means a wood fired appliance with a heat output of less than 40,000 BTU per hour with a closed fire chamber that maintains an air-to-fuel ratio of less than thirty during the burning of 90 percent or more of the fuel mass consumed in a low firing cycle. The low firing cycle means less than or equal to 25 percent of the maximum burn rate achieved with doors closed or the minimum burn achievable, whichever is greater. Wood fired forced air combustion furnaces that primarily heat living space, through indirect heat transfer using forced air duct work or pressurized water systems are excluded from the definition of "woodstove".

Rule 9.103 - Fuels

(1) Within Missoula County a person may not burn any material in a solid fuel burning device except uncolored newspaper, untreated wood and lumber, and products manufactured for the sole purpose of use as fuel. Products manufactured or processed for use as fuels must conform to any other applicable provision of this Program.

Rule 9.104 - Non-Alert Visible Emission Standards

(1) A person owning or operating a solid fuel burning device may not cause, allow, or discharge emissions from such device that are of an opacity greater than forty (40) percent.

(2) The provisions of this section do not apply to emissions during the building of a new fire, for a period or periods aggregating no more than ten (10) minutes in any four (4) hour period.

Subchapter 2 – Permits

Rule 9.201 - Swan River Watershed Exempt From Subchapter 2 Rules

(1) Chapter 9 Subchapter 2 does not apply to the Swan River watershed of northern Missoula County (also described as those portions of Airshed 2 which lie inside Missoula County.)

Rule 9.202 - Permits Required for Solid Fuel Burning Devices

(1) After July 1, 1986, a person may not install or use any new solid fuel burning device in any structure within the Air Stagnation Zone without an Installation permit.

(2) After May 14, 2010 a person may not install or use a new solid fuel burning device in any structure within Missoula County without an installation permit.

Rule 9.203 - Installation Permit~~s~~ Requirements Inside the Air Stagnation Zone

(1) Inside the Air Stagnation Zone, the department may only issue installation permits for the following solid fuel burning devices:

(a) Pellet stoves with emissions that do not exceed 1.0 gram per hour weighted average when tested in conformance with the EPA method (Subpart AAA).

(b) Pellet fueled central heaters that:

(i) meet the 2020 EPA Method (Subpart QQQQ) standards; and

(ii) have particulate matter emissions less than or equal to 0.1 pounds per million Btu heat output for each individual burn rate, and

(iii) have permanent label affixed specifying the EPA standard met.

(~~b~~c) Solid fuel burning devices installed in a licensed mobile food service establishment if the following conditions are met.

(i) The mobile food service establishment must have a current Montana food purveyor's

license. Permit will be considered automatically revoked if the Montana food purveyor's license lapses.

(ii) Mobile food trailer or vehicle must only be used for food preparation purposes.

(iii) The mobile food vendor may not operate the solid fuel burning device in Missoula County from November 1 through the end of February each winter.

(iv) The mobile food vendor shall not operate more than 7 consecutive days at any one location in Missoula County.

(v) The permitted solid fuel burning device must not create a nuisance. The department may revoke the installation permit and require the removal of the solid fuel burning device for a licensed mobile food service establishment if the department determines that the solid fuel burning device creates a nuisance.

(2) An installation permit expires 180 days after issuance unless a final inspection is conducted or unless the department receives adequate documentation to ~~insure~~ensure the type of device, and installation are in compliance with the provisions of this Program.

(3) New solid fuel burning devices may not be installed or used with a flue damper unless the device was so equipped when tested in accordance with Rule 9.401**.**

Rule 9.204 - Installation Permit Requirements Inside the Seeley Lake Wood Stove Zone

(1) Inside the Seeley Lake Wood Stove Zone, the department may only issue solid fuel burning device installation permits for:

(a) Pellet stoves with emissions that do not exceed 2.0 gram per hour when labeled and tested in conformance with the EPA method (Subpart AAA). Pellet stoves must be 70% energy efficient or greater using the EPA method (Subpart AAA).

(b) Solid fuel burning devices with emissions that do not exceed 2.0 grams per hour when tested with crib wood or solid fuel burning devices with emissions that do not exceed 2.5 grams per hour when tested with cord wood. The solid fuel burning devices must be labeled and tested in accordance with the EPA method (Subpart AAA). Solid fuel burning devices must be 70% energy efficient or greater using the EPA method (Subpart AAA).

~~(c) A Wood-Fired Hydronic Heater or Wood-Fired Forced Air Furnace that:~~

~~(i) is labeled and has been tested in accordance with the EPA Method (Subpart QQQQ); and~~

~~(ii) has particulate matter emissions less than or equal 0.15 pounds per million Btu heat output for each individual burn rate.~~

(c) Central heaters that:

(i) meet the 2020 EPA Method (Subpart QQQQ) standards; and

(ii) have particulate matter emissions less than or equal to 0.15 pounds per million Btu heat output for each individual burn rate, and

(iii) have permanent label affixed specifying the EPA standard met.

(2) An installation permit expires 180 days after issuance unless a final inspection is conducted or unless the department receives adequate documentation to ensure the type of device, and installation are in compliance with the provisions of this Program.

(3) Solid fuel burning devices approved for installation must be installed, maintained and operated in the same condition under which they were tested.

Rule 9.~~204~~ 205 - Installation Permit Requirements outside the Air Stagnation Zone and outside the Seeley Lake Wood Stove Zone

(1) Outside the Missoula Air Stagnation Zone and outside the Seeley Lake Wood Stove Zone, only the

following solid fuel burning devices may be installed in Missoula County~~:~~.

(a) A solid fuel burning device ~~equipped with a catalytic combustor~~ with emissions less than or equal to ~~4.1~~4.5 grams per hour weighted average when labeled and tested in accordance with the EPA method (Subpart AAA).

~~(b) A solid fuel burning device not equipped with a catalytic combustor with emissions less than or equal to 7.5 grams per hour weighted average when tested in accordance with the EPA method.~~

~~(c) A pellet stove tested at an independent lab which has:~~

~~(i) an air to fuel ratio of 35:1 or greater using EPA Method 28A; and~~

~~(ii) test results using EPA Method 5H, or Method 5G corrected to 5H, that have been conducted under minimum burn conditions, (category 1 of EPA Method 28) with particulate emissions that do not exceed 4.1 grams per hour.~~

~~(db)~~ ~~An Outdoor~~A ~~Wood~~ ~~Fired Hydronic Heater or Outdoor Pellet Fired Hydronic Heater~~Wood Fired Forced Air Furnace ~~that:~~

~~(i) has had EPA Test Method 28 OWHH emission test conducted on the model line~~ is labeled and tested in accordance with the EPA Method (Subpart QQQQ)~~; and~~

~~(ii) has~~ ~~been certified to meet the EPA Hydronic Heater Phase 2 Program emission limit of~~particulate matter emissions less than or equal ~~0.32 pounds per million Btu heat output~~.~~; and~~

~~(iii) within each of the test burn rate categories, no individual test run exceeds 18 grams per hour; and~~

~~(iv) the average emissions are less than or equal to 7.5 grams per hour.~~

(b) Central heaters that:

(i) meet the 2020 EPA Method (Subpart QQQQ) standards; and

(ii) have particulate matter emissions less than or equal to 0.15 pounds per million Btu heat output for each individual burn rate, and

(iii) have permanent label affixed specifying the EPA standard met.

~~(e) A solid fuel burning device with a heat input capacity between 250,000 and 1,000,000 BTU/hr that has been tested and shown to have emissions less than or equal to .9 grams per hour per 10,000 BTU heat input. Prior to approval for installation, testing methods used to determine compliance with this emission rate and sufficient documentation to show the device meets the emission requirements must be submitted to the department. Approval of the testing method is at the sole discretion of the department.~~

(~~f~~c) A solid fuel burning device not included in (a), (b), ~~(c),~~ or (~~d~~c) above which has been tested by an independent lab using an alternative testing method approved by the department that shows it has a particulate emission rate of less than or equal to ~~7.5~~4.5 grams per hour. Prior to approval for installation, testing methods used to determine compliance with this emission rate and sufficient documentation to show the device meets the emission requirements must be submitted to the department. Approval of the alternative testing method is at the sole discretion of the department.

(~~g~~d) Solid fuel burning devices installed in a licensed mobile food service establishment if the following conditions are met.

(i) The mobile food service establishment must have a current Montana food purveyor's license. Permit will be considered automatically revoked if the Montana food purveyor's license lapses.

(ii) Mobile food trailer or vehicle must only be used for food preparation purposes.

(iii) The mobile food vendor may not operate the solid fuel burning device in Missoula County from November 1 through the end of February each winter.

(iv) The mobile food vendor shall not operate more than 7 consecutive days at any one

location in Missoula County.

(v) The permitted solid fuel burning device must not create a nuisance. The department may revoke the installation permit and require the removal of the solid fuel burning device for a licensed mobile food service establishment if the department determines that the solid fuel burning device is creates a nuisance.

(2) An installation permit expires 180 days after issuance unless a final inspection is conducted or the department receives adequate documentation to insure the type of device and installation comply with the provisions of this program.

(3) New solid fuel burning devices may not be installed or used with a flue damper unless the device was so equipped when tested in accordance with Rule 9.401**.**

(4) Solid fuel burning devices approved for installation must be installed, maintained and operated in the same ~~fashion~~ condition under which they were tested.

Rule 9.~~205~~ 206 - Alert Permits

(1) Those woodstoves that have a valid alert permit issued by the department may be operated during a Stage I Air Alert subject to the opacity limitations in Rule 9.302.

(2) The department may issue a new alert permit for a pellet stove if the emissions do not exceed 1.0 gram per hour weighted average when tested in conformance with the EPA method.

(3) The department may renew an alert permit for a woodstove that has emissions that do not exceed 6.0 grams per hour weighted average when tested using the Oregon method or 5.5 grams per hour weighted average when tested using the EPA method if the original application for an alert permit was received prior to June 30, 1988 and the permit has never lapsed.

(4) The department may renew an alert permit for a woodstove that has emissions that do not exceed 4.0 grams per hour weighted average when tested using the Oregon Method or 4.1 grams per hour when tested using the EPA method if the original application for the Alert permit was received prior to October 1, 1994 and the permit has never lapsed.

(5) Before renewing an alert permit, the department may require information to determine if the woodstove is capable of meeting emission requirements. If an inspection of the appliance during operation is not allowed by the applicant, the department shall require evidence that any non-durable parts (e.g. catalytic combustor, gaskets, by-pass mechanisms) have been replaced as necessary to meet applicable emission limitations.

(6) To qualify for an alert permit or a renewal, catalyst-equipped woodstoves must be equipped with a permanent provision to accommodate a commercially available temperature sensor that can monitor combustor gas stream temperature within or immediately downstream (within 1.0 inch or 2.5 cm) of the combustor surface.

(7) An alert permit is valid for two years for any woodstove that uses a catalyst or other nondurable part as an integral part, and five years for other devices.

Rule 9.~~206~~ 207 - Sole Source Permits

(1) A solid fuel burning device with a valid sole source permit issued by the department may be operated during Stage I Air Alerts and Stage II Warnings subject to the opacity limitations of Rule 9.302.

(2) Inside the Air Stagnation Zone the department may only issue a new sole source permit for a pellet stove that:

(a) constitutes the sole source of heat in a private residence; and

(b) emits less than 1.0 gram per hour weighted average when tested using the EPA method.

(3) Inside Impact Zone M and outside the Air Stagnation Zone, the department may only issue a sole source

permit for a solid fuel burning device that:

(a) constitutes the sole source of heat in a private residence; and

(b) was a sole source of heat prior to May 14, 2010, or the property is not served by an electric utility.

(4) Inside the Air Stagnation Zone the department may renew a sole source permit for a solid fuel burning device that constitutes the sole source of heat in a private residence if the solid fuel burning device is:

(a) a pellet stove that emits less than 1.0 gram per hour weighted average when tested using the EPA method; or

(b) a woodstove that has a continuously renewed sole source permit originally issued prior to July 1, 1985.

(5) In the Air Stagnation Zone, a sole source permit is not eligible for renewal when the ownership of the property is transferred from person to person.

(6) In the Air Stagnation Zone, a sole source permit is valid for one year beginning July 1st through the last day of June the following year.

(7) In Impact Zone M but outside the Air Stagnation Zone, a sole source permit is valid until the property changes ownership or another method of heating is installed for the structure.

Rule 9.~~207~~ 208 - Special Need Permits

(1) Woodstoves with a valid special need permit issued by the department may be used during an Alert subject to the opacity limitations of Rule 9.302.

(2) A person who demonstrates an economic need to burn solid fuel for space heating purposes by qualifying for energy assistance according to economic guidelines established by the U.S. Office of Management and Budget under the Low Income Energy Assistance Program (L.I.E.A.P.), as administered in Missoula County by the District XI Human Resources Development Council, is eligible for a Special Need permit.

(3) Special need permits may be renewed providing the applicant meets the applicable need and economic guidelines at the time of application for renewal.

(4) Special need permits are issued at no cost to the applicant.

(5) A special need permit is valid for up to one (1) year from the date it is issued.

Rule 9.~~208~~ 209 - Temporary Sole Source Permit

(1) Woodstoves with a valid temporary sole source permit may be used during Stage 1 Air Alerts and Stage 2 Warnings, subject to the opacity limitations of Rule 9.302.

(2) A person may apply for a temporary sole source permit in an emergency situation if their solid fuel burning devices do not qualify for a permit under Rule 9.204 or 9.205. An emergency situation includes, but is not limited to, the following situations:

(a) where a person demonstrates his furnace or central heating system in inoperable other than through his own actions;

(b) where the furnace or central heating system is involuntarily disconnected from its energy source by a utility or fuel supplier; or

(c) where the normal fuel or energy source is unavailable for any reason.

(3) The department may issue a temporary permit if it finds that:

(a) the emissions proposed to occur do not constitute a danger to public health or safety;

(b) compliance with the air stagnation plan and Rule 9.302(1) would produce hardship without equal or greater benefits to the public; and

(c) compliance with the air stagnation plan and Rule 9.302(1) would create unreasonable economic

hardship to the applicant or render the residence as equipped severely uncomfortable for human habitation, or cause damage to the building or its mechanical or plumbing systems.

(4) The department may place conditions on a temporary permit to insure that the permittee is in compliance with the Program when the permit expires.

(5) The department shall arrange for an applicant interview to be conducted within five (5) working days of receipt of a written request for a temporary permit and shall render its decision within ten (10) working days of receipt of the written request.

(6) Application to and denial by the department for a temporary permit does not prevent the applicant from applying to the Control Board for a variance under the appropriate provisions of this Program.

(7) A temporary permit issued pursuant to this section is valid for a period determined by the department, but may not exceed one (1) year and is not renewable.

Rule 9.~~209~~ 210 - Permit Applications

(1) The department shall issue a permit pursuant to the regulations of this chapter when the applicant has submitted information, on forms supplied by the department, which indicates compliance with this chapter**,** local building codes, and other applicable provisions of this Program.

(2) The department shall decide whether to issue a permit or permit renewal within ten (10) working days after receiving an application.

Rule 9.~~210~~ 211 - Revocation or Modification of Permit

(1) A permit issued under this chapter may be revoked for a violation of:

(a) A condition of the permit;

(b) A provision of this Program;

(c) An applicable regulation, rule or standard adopted pursuant to the FCAA; or

(d) A provision of the Clean Air Act of Montana.

(2) A permit issued under this chapter may be modified for the following reasons:

(a) Changes in an applicable provision of this Program adopted by the Control Board, or rules adopted under the Clean Air Act of Montana;

(b) When the department or Control Board determines modifications are necessary to insure compliance with the provisions of this Program or an implementation plan approved by the Control Board.

(3) The department shall notify the permittee in writing of its intent to revoke or modify the permit. The department's decision to revoke or modify a permit becomes final unless the permittee requests, in writing, an administrative review within fifteen (15) days after receipt of the department's notice. Departmental receipt of a written request for a review initiates the department's appeal process outlined in Chapter 14 of this Program and postpones the effective date of the of the department's decision until the conclusion of the administrative appeals process.

Rule 9.~~211~~ 212 - Transfer of Permit

(1) A permit issued under this chapter may not be transferred from one location to another or from one solid fuel burning device to another. A permit may not be transferred from one person to another, unless re-issued by the department.

Subchapter 3 – Alert and Warning Requirements

Rule 9.301 - Applicability

(1) The regulations of Subchapter 3 apply within the Missoula Air Stagnation Zone and Impact Zone M.

Rule 9.302 - Prohibition of Visible Emissions during Air Pollution Alerts and Warnings

(1) Within the Air Stagnation Zone, a person owning, operating or in control of a solid fuel burning device may not cause, allow, or discharge any visible emission from such device during an air pollution Alert declared by the department pursuant to Rule 4.104 unless a sole source permit, a Temporary Sole Source permit, a special need permit, or an Alert permit has been issued for such device pursuant to this chapter.

(2) Within the Air Stagnation Zone, a person owning, operating or in control of a solid fuel burning device for which a sole source permit or special need permit has been issued may not cause, allow, or discharge any emissions from such device that are of an opacity greater than twenty (20) percent during an air pollution Alert declared by the department pursuant to Rule 4.104. The provisions of this paragraph do not apply to emissions during the building of a new fire or for refueling for a period or periods aggregating no more than ten (10) minutes in any four (4) hour period.

(3) Within the Air Stagnation Zone, a person owning, operating, or in control of a solid fuel burning device for which an Alert class permit has been issued may not cause, allow, or discharge any emissions from such device that are of an opacity greater than ten (10) percent during an air pollution Alert declared by the department pursuant to Rule 4.104. The provisions of this subsection do not apply to emissions during the building of a new fire, or for refueling for a period or periods aggregating no more than ten (10) minutes in any four (4) hour period.

(4) When declaring a Stage 1 Air Alert, the department shall take reasonable steps to publicize that information and to make it reasonably available to the public at least three (3) hours before initiating any enforcement action for a violation of this section.

(5) Every person operating or in control of a solid fuel burning device within the Air Stagnation Zone has a duty to know when an air pollution Alert has been declared by the department.

(6) Within Impact Zone M, a person owning, operating, or in control of a solid fuel burning device may not cause, allow, or discharge any visible emissions from such device during an air pollution Warning declared by the department pursuant to Rule 4.104 unless such device has a sole source permit or a temporary sole source permit. Within Impact Zone M, a person owning, operating or in control of a solid fuel burning device for which a sole source permit has been issued may not cause, allow, or discharge any emissions from such device that are of an opacity greater than twenty (20) percent during an air pollution Warning declared by the department pursuant to Rule 4.104. The provisions of this paragraph do not apply to emissions during the building of a new fire, for a period or periods aggregating no more than ten (10) minutes in any four (4) hour period.

Subchapter 4 – Emissions Certification

Rule 9.401 - Emissions Certification

(1) The Control Board hereby adopts the Oregon method for the sole purpose of establishing an uniform procedure to evaluate the emissions and efficiencies of woodstoves for compliance with the emission limitation imposed in Rules 9.203 and 9.204. Beginning January 1, 1988 the department shall also use the EPA method for the purpose of establishing a uniform procedure to evaluate the emissions and efficiencies of woodstoves.

(2) Devices exempted from the definition of "woodstove" listed in the Oregon method or "wood heater" listed in the EPA method may not be issued an Alert class or Installation class emissions certification unless tested to either method using modifications in the test procedure approved by the department.

(3) The department shall accept as evidence of compliance with the emission limitation imposed in Rules 9.203**,** 9.204, 9.205 and 9.501, labels affixed to the stove in compliance with OAR 340-21-150, 40 CFR Part 60, Subpart AAA, Section 60.536, or documentation that, in the opinion of the department, is sufficient to substantiate that the specific model, design, and specifications of the stove meet standards specified in Rules 9.203**,** 9.204, 9.205 and 9.501.

Rule 9.402 - Sale of New Solid Fuel Burning Devices

(1) New solid fuel burning devices sold or offered for sale in Missoula County shall be labeled as follows:

(a) A clearly visible, legible label must be placed on each device offered for sale;

(b) The label must clearly state where the solid fuel burning device can legally be installed in Missoula County, the label must use language approved by the department, and the label must include an informational contact phone number for the Missoula City-County Health Department; and

(c) The lettering on the label must be in block letters no less than 20-point bold type and the letters and numbers shall be in a color that contrasts with the background.

Subchapter 5 – Solid Fuel Burning Device Removal Program

Rule 9.501 - Removal of Solid Fuel Burning Devices Upon ~~Sale~~ Transfer of the Property.

(1) After ~~October 1, 1994~~(Insert date of approval by State DEQ)~~, in the Air Stagnation Zone~~, before a property is sold, transferred or conveyed in the Air Stagnation Zone all solid fuel burning devices contained on the property that is sold, transferred or conveyed ~~to be sold~~ must be removed from the property or rendered permanently inoperable unless they meet the ~~emissions requirements~~ specifications listed in Section (2) of this rule.

(2) The following solid fuel burning devices may remain on a property that is sold, transferred or conveyed in the Air Stagnation Zone ~~to be sold:~~.

(a) ~~Woodstoves or~~ Pellet Stoves installed with a valid permit if the emissions do not exceed:

(i) 6.0 grams per hour weighted average when tested in conformance with the Oregon Method; or

(ii) 5.5 grams per hour weighted average when tested in conformance with the EPA Method.

(b) Commercially manufactured pellet stoves:

(i) that have not been tested, but were installed prior to October 1, 1994; or

(ii) with emissions that do not exceed 1.0 grams per hour when tested in conformance with the EPA Method.

(c) Fireplaces meeting the definition of Rule 9.102(6).

(d) Wood-fired, forced-air combustion furnaces that primarily heat living space, through indirect heat transfer using forced air duct work or pressurized water systems.

~~(3) Within the Air Stagnation Zone, it is unlawful for any person to complete, or allow the completion of the sale, transfer or conveyance of any real property unless a Certificate of Compliance is filed with the Missoula County Clerk and Recorders 'Office.~~

~~(4) (a) Until July 1, 2001, a Certificate of Compliance is valid until the real property is transferred or conveyed to a new owner. At that time, another Certificate must be filed.~~

~~(b) After July 1, 2001, once a Certificate of Compliance has been filed for a property, another certificate is not needed if the number and type of stoves on the real property matches what is on file at the department. The department shall list properties with Certificates of Compliance on the internet. A copy of the list must be available at the department for inspection.~~

~~(5) The Certificate of Compliance must state that either:~~

~~(a) there are no solid fuel burning devices on the property; or~~

~~(b) any solid fuel burning devices on the property meet the requirements of Section (2) above.~~

~~(6) The Certificate of Compliance must be in a format specified by the department and must be signed by the seller(s), the buyer(s), the real estate agent(s) of the seller(s), and if any solid fuel burning devices will remain on the property, a certified inspector must sign the certificate.~~

(~~7~~) ~~City Building Department inspectors and persons certified by the department to inspect and certify that solid fuel burning devices on the real property meet the criteria described by these regulations shall sign and submit a Certificate of Compliance to the Missoula County Clerk and Recorders Office.~~

~~(8) The Certificate of Compliance does not constitute a warranty or guarantee by the department or certified inspectors that the Solid Fuel Burning Device on the property meets any other standards of operation, efficiency or safety, except the emission standards contained in these regulations.~~

Subchapter 6 – Contingency Measures

Rule 9.601 - Contingency Measures listed below in this subchapter go into ~~affect~~ effect if the non-attainment area fails to attain the NAAQS or to make reasonable progress in reducing emissions (see Chapter 3).

(1) Rule 9.302(1) is modified to delete Alert class permitted devices, and Rules 9.302(3) and 9.205(1) are void.

(2) All portions of this chapter that allow Alert permits to burn during alerts or warnings are hereby rescinded.

CHAPTER 10
FUELS

Subchapter 1 - Oxygenated Fuels Program

Rule 10.101 - Intent
The purpose of this regulation is to reduce carbon monoxide emissions from gasoline powered motor vehicles in the control area through the wintertime use of oxygenated gasoline. The use of oxygenated fuel in the Missoula area is mandated by the 1990 Federal Clean Air Act.

Rule 10.102 - Definitions
The following definitions apply in this subchapter:

(1) "Control Area" means those portions of Missoula County, excluding the Salish/Kootenai Indian Reservation, located within: township 11 north, range 17 through 21, and; township 12 north, range 17 through 21, and township 13 north, range 17 through 21, and; township 14 north, range 17 through ~~4~~21, and; township 15 north, range 17 through 21. (see Appendix A)

(2) "Control Area Terminal" means a terminal capable of receiving gasoline in bulk (i.e., by pipeline or rail), and where gasoline intended for use in the control area is sold or dispensed into trucks or where gasoline is altered either in quantity or quality, excluding the addition of deposit control additives.

(3) "Control period" means November 1st through the last day of February, during which oxygenated gasoline must be sold and dispensed in the control area.

(4) "Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any oxygenate blending facility, gasoline refinery or control area terminal and any fueling facility.

(5) "Fueling facility operator" means any person who owns, leases, operates, controls or supervises a fueling facility.

(6) "Fueling facility" means any establishment where gasoline is sold, offered for sale, or dispensed to the ultimate consumer for use in motor vehicles, including facilities that dispense gasoline to any motor vehicle.

(7) "Gasoline" means any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

(8) "Motor Vehicle" means any self-propelled vehicle that is designed primarily for travel on public highways, streets, and roads and that is generally and commonly used to transport persons and property. For the purpose of this regulation, motor vehicles refers to spark ignition motor vehicles that use, on a part or full time basis, gasoline or gasoline-type products.

(9) "Oxygenate" means any substance that, when added to gasoline, increases the amount of oxygen in that gasoline blend. Lawful use of any combination of these substances requires that they be "Substantially Similar" under Section 211 (f)(1) of the FCAA or be permitted under a waiver granted by the EPA Administrator under the authority of Section 211(f)(4) of the FCAA.

(10) "Oxygenate Blending Facility" means any facility where gasoline, intended for use in the control area, is altered through the addition of oxygenate to gasoline and where the quality or quantity of gasoline is not otherwise altered, except through the addition of deposit-control additives.

(11) "Oxygenated fuel" means gasoline uniformly blended with an oxygenate and having a minimum oxygen content of 2.7% by weight, as determined using the test methods in Appendix F "Test for Determining the Quantity of Alcohol in Gasoline", 40 CFR Part 80.

Rule 10.103 - Oxygenated Fuel Required

During the control period, gasoline intended as a final product for fueling of motor vehicles within the control area may not be supplied or sold by any person, or sold at retail, or sold to a private fleet for consumption, or introduced into a motor vehicle by any person unless the gasoline is oxygenated fuel. The definition of person in this requirement includes, but is not limited to, a control area terminal, oxygenate blending facility, distributor, or fueling facility operator. This section does not apply to the sale of gasoline from a refinery to a control area terminal, from a control area terminal to an oxygenate blending facility, or from any person to a fueling facility located outside the control area.

Rule 10.104 - Labeling Gasoline Pumps

(1) During the control period, each gasoline pump stand from which oxygenated gasoline is dispensed at a fueling facility in the control area must be have a legible and conspicuous label that contains the following statement: "The gasoline dispensed from this pump is oxygenated with (fill in blank with ethanol or other SIP-approved oxygenate name) which will reduce carbon monoxide pollution from motor vehicles."

(2) The posting of the above statement must be in block letters of no less than 20-point bold type; in a color contrasting the intended background.

(3) The label must be placed in the vertical surface of the pump on each side with gallonage and dollar amount meters and must be on the upper one-third of the pump, clearly readable to the public.

Rule 10.105 - Oxygenate Blending Facility Requirements

(1) All oxygenate blending facilities operating during the control period shall provide facilities, operational procedures, and record keeping that ~~insure~~ ensure that gasoline to be delivered into the control area during the control period is uniformly blended to an oxygen content of not less than 2.7% by weight.

(2) All oxygenate blending facilities shall register with the department on forms provided by the department no less than thirty (30) days before commencing operation. The department shall require that oxygenate blending facilities provide information to the department that indicates that the facility will comply with Rule 10.105(1). Any changes in the information required on the registration must be reported by the blending facility to the department in writing within thirty (30) days of occurrence.

(3) From September 1st through the end of February of each year, all oxygenate blending facilities shall maintain records of gasoline loaded onto trucks or into on-site fueling facilities indicating: date of loading, the grade of gasoline loaded, the quantity of gasoline loaded, type of oxygenate, and the percent oxygen content. A copy of these records must be provided to the distributor. These records must be maintained for a period of at least two years and must be available for inspection by the department or its designee.

(4) Oxygenate blending facilities shall provide adequate facilities and oxygenate to make oxygenated fuel available for purchase from September 1 through the end of February.

(5) Each oxygenate blending facility shall collect samples and conduct oxygen content analysis of oxygenated fuel distributed in the control area. The number of samples analyzed must be adequate to characterize the oxygen content of the gasoline leaving the facility. The oxygen content of all samples analyzed must be reported to the department on a monthly basis. The department shall maintain written procedures to determine the number of samples required for analysis by each facility. (See Appendix D for current sampling schedule.)

Rule 10.106 - Distributor Requirements

(1) A distributor may not deliver gasoline to any fueling facility inside the control area during the control period unless the gasoline is oxygenated fuel.

(2) From September 1st through the end of February, all distributors shall maintain the following records:
(a) from the blending facility that show date of receipt from the blending facility, the grade of gasoline, the oxygenate blending facility source, the quantity of gasoline received, type of oxygenate, and the percent oxygen content; and
(b) records indicating the date on which oxygenated fuels are ordered by a fueling facility, and delivered,

including records that show the name of the fueling facility, date of delivery, the grade of gasoline delivered, the oxygenate blending facility source, the quantity of gasoline delivered, the storage tank that the gasoline is unloaded to, type of oxygenate, and the percent oxygen content.

(3) These records must be maintained for at least two years and must be available for inspection by the department or its designee.

Rule 10.107 - Fueling Facility Operator Requirements

(1) All fueling facility operators in the control area shall plan bulk gasoline purchases in such a manner as to insure that all gasoline dispensed is oxygenated fuel by no later than November 1st and for the entire control period.

(2) All fueling facilities in operation in the control area during the control period must be registered with the department on forms provided by the department no later than September 1, 1992, or, in the case of new facilities, thirty (30) days before commencing operation. Any changes in the information required on the registration form must be reported by the fueling facility to the department in writing within thirty (30) days of occurrence.

(3) All fueling facilities dispensing gasoline in the control area during the control period shall obtain all oxygenated fuel from a registered oxygenate blending facility.

(4) All fueling facilities in the control area shall maintain records indicating the date on which oxygenated fuels are ordered, and delivered, including receipts of delivery from the distributor showing date of delivery, the grade of gasoline, the oxygenate blending facility source, the quantity of gasoline delivered, the storage tank that the gasoline is unloaded to, type of oxygenate, and the percent oxygen content. These records must be maintained for a period of at least two years and must be available for inspection by the department or its designee.

Rule 10.108 - Inability to Produce Oxygenated Fuel in Extraordinary Circumstances

(1) In appropriate extreme and unusual circumstances (e.g., natural disaster or Act of God) that are clearly outside the control of the oxygenate blending facility, distributor, or fueling facility and that could not have been avoided by the exercise of prudence, diligence and due care, the department may permit an oxygenate blending facility, distributor, or fueling facility, for a brief period, to distribute gasoline that does not meet the requirements for oxygenated fuel if:

(a) It is in the public interest to do so (e.g., distribution of the nonconforming gasoline is necessary to meet projected shortfalls that cannot otherwise be compensated for), and;

(b) The oxygenate blending facility, distributor, or fueling facility exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity, and;

(c) The oxygenate blending facility, distributor, or fueling facility can show how the requirements for oxygenated fuel will be expeditiously achieved, and;

(d) The blending facility agrees to make up the air quality detriment associated with the nonconforming gasoline, where practicable, and;

(e) The oxygenate blending facility, distributor, or fueling facility pays the department an amount equal to the economic benefit of the nonconformity minus the amount expended pursuant to (d) above, in making up the air quality detriment.

Rule 10.109 - Registration Fees

(1) The Control Board shall set a fee schedule for the registration of affected facilities. The total amount of fees collected per budget period must be sufficient to defray all costs of assuring compliance with this rule~~,~~ ~~including but not limited to the costs of collection and analysis of samples from 20% of all regulated gasoline storage tanks and the costs of collection and analysis of samples from blending facilities. (See Attachment A for current registration fee schedule.)~~

Rule 10.110 – When Authorized by the Federal Government - Cessation of Oxygenated Fuels Program

(1) Within one year of the EPA authorizing Missoula County to cease the Oxygenated Fuels Program, the department shall suspend Rules 10.103 through 10.109.

Rule 10.~~110~~ 111 - Contingency Measure

(1) Upon notification by the DEQ and the EPA that a violation of the 8 hour NAAQS for carbon monoxide has occurred, and with departmental determination that motor vehicles are greater than 40 percent of the cause, the control period must be extended to include the month of the violation and any intervening months.

(2) If the Oxygenated Fuels Program has been suspended per Rule 10.110 and upon notification by the DEQ and the EPA that a violation of the 8-hour NAAQS for carbon monoxide has occurred, and with departmental determination that motor vehicles are greater than 40 percent of the cause, the Oxygenated Fuels Program, Rules 10.103 through 10.109 will be reinstated and the control period must be extended to include the month of the violation and any intervening months.

Subchapter 2 - Sulfur Limits

Rule 10.201 - Regulation of Sulfur in Fuel

(1) A person may not burn liquid or solid fuels containing sulfur in excess of one pound of sulfur per million BTU fired.

(2) A person may not burn any gaseous fuel containing sulfur compounds in excess of 50 grains per 100 cubic feet of gaseous fuel, calculated as hydrogen sulfide at standard conditions, except this provision does not apply to:

(a) The burning of sulfur, hydrogen sulfide, acid sludge or other sulfur compounds in the manufacturing of sulfur or sulfur compounds.

(b) The incinerating of waste gases provided that the gross heating value of such gases is less than 300 BTU's per cubic foot at standard conditions and the fuel used to incinerate such waste gases does not contain sulfur or sulfur compounds in excess of the amount specified in this rule.

(c) The use of fuels where the gaseous products of combustion are used as raw materials for other processes.

(d) Small refineries (under 10,000 barrels per day crude oil charge) provided that they meet other provisions of this rule.

(3) The following are exceptions to this rule:

(a) A permit may be granted by the department to burn fuels containing sulfur in excess of the sulfur contents indicated in Sections (1) and (2) provided it can be shown that the facility burning the fuel is fired at a rate of one million BTU per hour or less.

(b) For purpose of this rule, a higher sulfur containing fuel may, upon application to the department, be used if such fuel is mixed with one or more lower sulfur containing fuels that results in a mixture, the equivalent sulfur content of which is not in excess of the stated values when fired.

(c) The requirements of Section (1) are deemed to be satisfied if, upon application to the department, a sulfur dioxide control process is applied to remove the sulfur dioxide from the gases emitted by burning of fuel of any sulfur content that results in an emission of sulfur in pounds per hour not in excess of the pounds per hour of sulfur that would have been emitted by burning fuel of the sulfur content indicated without such a cleaning device.

Rule 10.202 - Regulation of Sulfur in Fuel Burned Within the Air Stagnation Zone

(1) A person may not burn solid or liquid fuels containing sulfur in excess of .28 pounds of sulfur per million BTU fired within the Air Stagnation Zone.

(2) The provisions of Section (1) do not apply to:
(a) The incinerating of waste gases provided that the gross heating value of such gases is less than 300 BTU's per cubic foot at standard conditions and the fuel used to incinerate such waste gases does not contain sulfur or sulfur compounds in excess of the amount specified in Section (1) of this rule.

(b) The use of fuels where the gaseous products of combustion are used as raw materials for other processes.

(3) Exceptions
(a) With department approval, higher sulfur containing fuel may be used in the Air Stagnation Zone, if such fuel is mixed with one or more lower sulfur containing fuels and results in a mixture, the equivalent sulfur content of which, when fired, is not in excess of the limit set forth in Section (1).

(b) The requirements of Section (1) shall also be satisfied, if a sulfur dioxide control process approved by the department is applied or installed to remove the sulfur dioxide from the gases emitted by burning of fuel of any sulfur content that results in an emission of sulfur in pounds per million BTU fired not in excess of that which would have been emitted by burning fuel of the sulfur content allowed under Section (1).

Rule 10.203 - Labeling Requirements

Within Missoula County, a person may not sell solid or liquid fuel exceeding the sulfur content allowed in Rule 10.202 Section (1) without first informing the customer in writing, which may include but is not limited to printed notices, labeling, and clearly visible signs that state, "The sulfur content of this fuel exceeds the legal maximum for fuels used within the Missoula County Air Stagnation Zone. Combustion of this fuel within the Air Stagnation Zone is illegal".

Subchapter 3 - Petroleum Products Storage

Rule 10.301 - Containers with More Than 65,000 Gallon Capacity

(1) A person may not place, store or hold in any stationary tank, reservoir or other container of more than 65,000 gallons capacity any crude oil, gasoline or petroleum distillate having a vapor pressure of 2.5 pounds per square inch absolute or greater under actual storage conditions, unless such tank, reservoir or other container is a pressure tank maintaining working pressures sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere, or is designed and equipped with one of the following vapor loss control devices, properly installed, in good working order and in operation:
(a) A floating roof, consisting of a pontoon-type or double deck type roof, resting on the surface of the liquid contents and equipped with a closure seal, or seals to close space between the roof edge and tank wall. The control equipment provided for in this paragraph may not be used if the gasoline or petroleum distillate has a vapor pressure of 13.0 pounds per square inch absolute or greater under actual storage conditions. All tank gauging and sampling devices must be gas-tight except when gauging or sampling is taking place.

(b) A vapor recovery system, consisting of a vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place.

(c) Other equipment of equal efficiency provided such equipment has been approved by the Control Officer.

Rule 10.302 - Oil-Effluent Water Separators

(1) A person may not use any compartment of any single or multiple compartment oil-effluent water separator that receives effluent water containing 200 gallons a day or more of any petroleum product from any equipment processing, refining, treating, storing or handling kerosene or other petroleum product of equal or greater volatility than kerosene, unless such compartment is equipped with one of the following vapor loss control devices, constructed so as to prevent any emission of hydrocarbon vapors to the atmosphere, properly installed, in good working order and in operation:
(a) A solid cover with all openings sealed and totally enclosing the liquid contents. All gauging and sampling devices must be gas-tight except when gauging or sampling is taking place.

(b) A floating roof, consisting of a pontoon type or doubledeck type roof, resting on the surface of the liquid contents and equipped with a closure seal, or seals, to close the space between the roof edge and containment wall. All gauging and sampling devices must be gas-tight except when gauging or sampling is taking place.

(c) A vapor recovery system, consisting of a vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place.

(d) Other equipment of equal efficiency provided such equipment has been approved by the Control Officer.

(2) This rule does not apply to any oil-effluent water separator used exclusively in conjunction with the production of crude oil.

Rule 10.303 - Loading Gasoline

(1) A person may not load or permit the loading of gasoline into any stationary tank with a capacity of 250 gallons or more from any tank truck or trailer, except through a permanent submerged fill pipe, unless such tank is equipped with a vapor loss control device or is a pressure tank as described in Rule 10.301.

(2) The provisions of Section (1) do not apply to loading gasoline into any tank with a capacity of 2,000 gallons or less, that was installed prior to June 30, 1971 nor any underground tank installed prior to June 30, 1971 where the fill line between the fill connection and tank is offset.

(3) A person may not install any gasoline tank with a capacity of 250 gallons or more unless such tank is equipped as described in Section (1).

Rule 10.304 - Exemptions

(1) The provisions of this subchapter do not apply to any stationary tank used primarily for fueling implements of husbandry.

(2) Facilities used exclusively for the production of crude oil are exempt from this subchapter.

CHAPTER 11
MOTOR VEHICLES

Rule 11.101 - Removal of Control Devices
A person may not intentionally remove, alter or otherwise render inoperative, exhaust emission control, crank case ventilation or any other air pollution control device that has been installed as a requirement of Federal law or regulation.

Rule 11.102 - Operation of Motor Vehicles
A person may not operate a motor vehicle originally equipped with air pollution control devices as required by Federal law or regulation unless such devices are in place and in operating condition.

Rule 11.103 - Four-Cycle Gasoline Powered Vehicles
A person may not emit or cause to be emitted any visible air pollutant into the atmosphere for a period greater than five (5) consecutive seconds from any four-cycle gasoline-powered vehicle.

CHAPTER 12
ODORS

Rule 12.101 - Public Nuisance

(1) A person may not cause or allow any emissions of gases, vapors, or odors beyond his or her property line in such a manner as to create a public nuisance.

Rule 12.102 - Odor Control Equipment

(1) A person operating any business or using any machine, device, equipment, process or other contrivance that discharges odorous air pollutants into the outdoor air shall provide, properly install, use, and maintain in good working order such control devices as may be specified by the department.

Rule 12.103 - Other Odor Control Measures

(1) Odor producing materials must be stored and handled so they do not create a public nuisance. A person may not cause or allow the accumulation of quantities of such materials as to permit spillage or other escape.

(2) Odor bearing gases, vapors, fumes or dusts arising from materials in process must be so confined at the point of origin as to prevent liberation of odorous matter. Confined gases, vapors, fumes or dusts must be treated before discharge to the atmosphere as required in Rule 12.102.

Rule 12.104 - Enclosure Of Buildings

(1) Whenever air pollutants escape and cause a public nuisance, the department may order that a building or buildings in which processing, handling and storage are done be tightly closed and ventilated so that all air and air pollutants leaving the building are effectively treated before discharge into the open air.

Rule 12.105 - Odor Control Equipment Required in Reduction Processes

(1) A person may not operate or use any device, machine, equipment or other contrivance for the reduction of animal matter unless all gases, vapors and gas-entrained effluent from such facility are incinerated at 1200°F or higher for at least 0.3 seconds, or processed in such manner as determined by the department to be equally or more effective for the purpose of air pollution control.

(2) A person incinerating or processing gases, vapors, or gas-entrained effluent pursuant to this regulation shall provide, properly install, use, and maintain in good working order, devices as specified by the department for indicating temperature, pressure or other operating conditions.

CHAPTER 13
VARIANCES

Rule 13.101 - Purpose

A variance is permission given by the Control Board after a hearing allowing short-term deviation from strict compliance with these regulations.

Rule 13.102 - General Requirements

(1) A person who owns or is in control of a property subject to this Program may apply to the Control Board for a variance from rules governing the quality, nature, duration or extent of emissions of air pollutants.

(2) The Control Board may grant or renew a variance if it finds:
(a) The emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) Compliance with the provisions of this Program from which variance or variance renewal is sought would produce hardship without equal or greater benefit to the public.

(3) The Control Board may place conditions on a variance or variance renewal to reduce emissions, minimize the impacts of air pollutants or protect the public health or safety, and the person subject to the variance shall adhere to those conditions. Failure to adhere to the conditions is a violation of this Program and is cause for revocation of the variance or renewal and other appropriate legal action.

(4) The Control Board shall hold a public hearing before deciding on a variance or variance renewal request.

(5) Variances and variance renewals are non-transferable and remain valid only for the applicant to whom they are granted.

(6) No variance or variance renewal granted by the Control Board prevents or limits the application of the emergency provisions and proceedings of Chapter 4 of this Program to any person or his property.

Rule 13.103 - Limitations to Granting Variances

(1) The Control Board may grant a variance only after a public hearing and after it has considered the relative interest of the applicant, owners of property likely to be affected by the emissions and the general public.

(2) The Control Board may not grant a variance or variance renewal for a period of more than six months, except that a variance or variance renewal from the provisions of Chapter 9 (Solid Fuel Burning Devices) may be granted for up to one year.

(3) The Control Board may renew a variance only once.

Rule 13.104 - Application

(1) An application for a variance may be in the form of a letter and must contain the following information:
(a) Applicant's name and address;

(b) Specific provision(s) of this Program from which a variance is requested;

(c) Legal description or address of property where variance would apply;

(d) Detailed and accurate description of the circumstances under consideration;

(e) Explanation addressing each ~~criteria~~ criterion under Rule 13.102(2);

(f) Any other relevant information that the department or Control Board may require.

(2) Upon receipt of a completed application and fee, the Control Board shall schedule a public hearing and shall give the applicant at least thirty days notice prior to the hearing.

Rule 13.105 - Public Notice

(1) Notice of a variance hearing must be published:
(a) at least once in a newspaper of general circulation in the geographical area where the plant, equipment, or affected property is located;

(b) at least thirty (30) days before the hearing.

(2) Notice of hearing must be given to all known interested persons and to any person or group upon request.

(3) The contents of the public notice must include at least the following:
(a) The name and address of the applicant;

(b) Time, location and nature of the hearing;

(c) Brief description of applicant's activities, matter asserted, or operations for which a variance is requested;

(d) the location of the facility or activity subject to the variance request;

(e) A brief description of the purpose of the hearing, including a reference to the particular statute and rules involved;

(f) Address and phone number of the premises at which interested persons may obtain further information, inspect, copy or obtain a copy of the application; and

(g) The legal authority and jurisdiction under which the hearing is to be held.

Rule 13.106 - Final Decision

(1) The Control Board shall make a final decision within thirty (30) days following the public hearing, unless it notifies the applicant that more time (up to an additional 60 days) is needed. The final order must be in writing and signed by the chair of the Control Board and must include findings of fact and conclusions of law and a decision. Notice of the final order is to be given parties and their attorneys within twenty (20) days following issuance of the final order.

(2) The granting of a variance or a variance renewal is made solely at the discretion of the Control Board. A person adversely affected by a variance or variance renewal granted by the Control Board may obtain judicial review thereof as provided in Chapter 14 of this Program.

Rule 13.107 - Renewal

(1) A person who has been granted a variance by the Control Board may request a renewal.

(2) Requests for renewals may be in the form of a letter, and must include the information required in Rule 13.104.

(3) Upon receipt of a completed application and payment of the fee required by 13.108, the Control Board shall schedule a public hearing and shall notify the applicant of the time and place of that hearing.

(4) Public notice of the renewal application and public hearing must be given at the applicant’s expense at least 30 days prior to the hearing by publication at least once in a newspaper of general circulation published within the geographical area wherein the plant, equipment or property is located.

(5) The notice must include the following information:
(a) a statement that application is being made to the Control Board to renew a variance and for what purpose;

(b) the address of the property where the variance applies;

(c) the name and business address of the applicant; and

(d) the time, location and date of the public hearing.

(6) The applicant shall provide a copy of the notice, certified as to the manner of publication, to the department concurrent with the publication.

Rule 13.108 - Fees

(1) A person who applies to the Control Board for a variance shall submit with the application a sum of not less than $500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed $80,000.

(2) The person requesting the variance shall describe the facility or situation in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine the fee with reasonable accuracy.

(3) The department may charge a minimum variance application fee of $50 for requests for a variance from Chapter 9 if the applicant demonstrates economic hardship.

(4) The department shall prepare a statement of actual costs incurred and shall return unused fees to the applicant.

(5) For a renewal of a variance the minimum fee applies or the fee may be waived by the department.

(6) The fee must be deposited in a special revenue account of the Health fund and used by the Control Board to compile the information required for rendering a decision on the request, to offset the costs of a public hearing, printing or mailing and to carry out its other responsibilities under this Program.

CHAPTER 14
ENFORCEMENT AND ADMINISTRATIVE PROCEDURES

Rule 14.101 - Notice of Violation

(1) Whenever the department determines that there are reasonable grounds to believe that a violation of any provision of this Program or a condition or limitation imposed by a permit issued by the department has occurred, the department may issue a written notice to be served personally or by registered or certified mail on the alleged violator or his agent.

(2) This notice must specify the provision of the Program or permit condition alleged to have been violated and the facts alleged to constitute the violation.

(3) If the department issues a Notice of Violation to a person for a first violation of any provision of Chapter 9 (Solid Fuel Burning Devices) during any one burning season, as defined in that Chapter, the department shall provide such person with a summary of the regulations that affect solid fuel burning devices.

Rule 14.102 - Order to Take Corrective Action

(1) A Notice of Violation may include an Order to Take Corrective Action within a reasonable period of time stated in the order.

(2) The order may:
(a) require the production of information and records;

(b) may prescribe the date by which the violation must cease; and

(c) may prescribe time limits for particular actions in preventing, abating, or controlling the emissions.

(3) The order becomes final unless, within twenty (20) days after the Notice and Order is received, the person named requests in writing an administrative review as provided for in Rule 14.106.

Rule 14.103 - Appearance Before the Control Board

(1) The department or the Control Board may require alleged violators of this Program to appear before the Control Board for a hearing at a time and place specified in the notice.

Rule 14.104 - Other Remedies

(1) Action under this Chapter does not bar enforcement of this Program by injunction, seeking penalties or other appropriate remedy.

(2) Nothing in this Chapter may be construed to require a hearing prior to the issuance of an emergency order pursuant to Chapter 4 of this Program. When applicable, the emergency procedures of the Missoula County Air Stagnation Plan, Chapter 4 supersede the provisions of this Chapter.

Rule 14.105 - Credible Evidence

(1) For the purpose of establishing compliance with this Program or establishing whether a person has violated or is in violation of any standard or limitation adopted pursuant to this Program or Title 17, Chapter 8 of the Montana Code Annotated, nothing in these rules precludes the use, including the exclusive use, of any relevant evidence.

Rule 14.106 - Administrative Review

(1) A person subject to a Notice of Violation or Order to Take Corrective Action issued under the authority of this Program may request an administrative review by the Health Officer or his or her designee (Hearing Officer).

(2) A request for an administrative review does not suspend or delay the department's notice or order except as otherwise provided for in this Program.

(3) The Hearing Officer shall schedule a review within ten (10) days after receipt of the request. The review may be scheduled beyond ten days after receipt of the request by mutual consent of the department and the party requesting the review.

(4) The Hearing Officer shall provide written or verbal notice to the person requesting the review of the date, time and location of the scheduled hearing.

(5) The Hearing Officer may continue the administrative review for a reasonable period following the hearing to obtain information necessary to make a decision.

(6) The Hearing Officer shall affirm, modify, or revoke the Notice of Violation, Order to Take Corrective Action, in writing, following the completion of the administrative review. A copy of this decision must be sent by certified mail or hand delivered to the person who requested the review.

Rule 14.107 - Control Board Hearings

(1) Any person subject to an Order to Take Corrective Action issued under the authority of this Program may request a hearing before the Control Board following the conclusion of an administrative review. A request for a hearing must be received within fifteen (15) days of the administrative review's conclusion. The request for a hearing must state in writing specific grounds for disputing the administrative reviews decision.

(2) A person that is adversely affected by the department's decision to issue, modify or deny a permit under the authority of this Program may request a hearing before the Control Board. A request for a hearing must be received within fifteen (15) days of the department's final decision to issue, modify or deny a permit. The request for a hearing must state in writing specific grounds for issuing the permit, for not issuing the permit or for modifying the permit.

(3) The Control Board shall schedule a hearing within sixty (60) days after receipt of a written request and shall notify the applicant of that hearing.

(4) The Control Board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties.

(5) Public hearings must proceed in the following order:
(a) first, the department shall present a staff report, if any.

(b) second, the person who requested the hearing shall present relevant evidence to the Board; and

(c) third, the Board shall hear any person in support of or in opposition to the issue being heard and shall accept any related letters, documents or materials.

(6) After a hearing regarding an Order to Take Corrective Action, the Control Board shall issue a final decision that affirms, modifies or rescinds the department's Order to Take Corrective Action. In addition, the Control Board may issue an appropriate order for the prevention, abatement or control of the emissions involved.

(7) After a hearing regarding a permitting action, the Control Board shall issue, deny, modify, suspend or revoke the permit within 30 days following the conclusion of the hearing.

(8) A person aggrieved by an order of the Control Board may apply for rehearing upon one or more of the following grounds and upon no other grounds:
(a) the Control Board acted without or in excess of its powers;

(b) the order was procured by fraud;

(c) the order is contrary to the evidence;

(d) the applicant has discovered new evidence, material to him which he could not with reasonable diligence have discovered and produced at the hearing; or

(e) competent evidence was excluded to the prejudice of the applicant.

(9) The petition for a rehearing must be filed with the Control Board within thirty (30) days of the date of the Control Board's order.

Rule 14.108 - Judicial Review

(1) Within thirty (30) days after the application for rehearing is denied, or if the application is granted, within thirty (30) days after the decision on the rehearing, a party aggrieved thereby may appeal to the Fourth Judicial District Court.

(2) The appeal shall be taken by serving a written notice of appeal upon the chair of the Control Board, which service shall be made by the delivery of a copy of the notice to the chair and by filing the original with the Clerk of Court of the Fourth Judicial District. Immediately after service upon the Control Board, the Control Board shall certify to the District Court the entire record and proceedings, including all testimony and evidence taken by the Control Board. Immediately upon receiving the certified record, the District Court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the same to be served upon the Control Board and the appellant.

(3) The District Court shall hear and decide the cause upon the record of the Control Board. The District Court shall determine whether the Control Board regularly pursued its authority, whether the findings of the Control Board were supported by substantial competent evidence, and whether the Control Board made errors of law prejudicial to the appellant.

(4) Either the Control Board or the person aggrieved may appeal from the decision of the District Court to the Supreme Court. The proceedings before the Supreme Court are limited to a review of the record of the hearing before the Control Board and of the district court's review of the record.

CHAPTER 15
PENALTIES

Rule 15.101 - General Provisions

(1) Action under this Chapter is not a bar to enforcement of this Program, or regulations or orders made pursuant thereto, by injunction or other appropriate remedy. The Control Board or the department may institute and maintain in the name of the county or the state any and all enforcement proceedings.

(2) All fines collected under this chapter are deposited in the County General Fund.

(3) It is the intention of the Control Board to impose absolute liability upon persons for conduct that violates any part, provision or order issued pursuant to these regulations. Unless otherwise specifically provided, a person may be guilty of an offense without having, with respect to each element of the offense, either knowledge, negligence, or specific intent.

(4) It is the specific intention of the Control Board that these regulations impose liability upon corporations for violations of a part, provision or order issued pursuant to these regulations.

(5) A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable.

(6) A person is legally accountable for the conduct of another under these regulations when he:
(a) causes another to perform the conduct, regardless of the legal capacity or mental state of the other person; or

(b) either before or during the commission of an offense with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid such other person in the planning or commission of the offense.

Rule 15.102 - Criminal Penalties

(1) Except as provided for in Rule 15.104, a person who violates a provision, regulation, or rule enforced under this Program, or an order made pursuant to this Program, is guilty of an offense and upon conviction subject to a fine not to exceed ten thousand dollars ($10,000.00). Each day of the violation constitutes a separate offense.

Rule 15.103 - Civil Penalties

(1) Except as provided in Rule 15.104, a person who violates a provision, rule or order under this Program, after notice thereof has been given by the department is subject to a civil penalty not to exceed ten thousand dollars ($10,000) per violation. Each day a violation continues constitutes a separate violation. Upon request of the department the county attorney may petition the district court to impose, assess and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided in Rule 15.102.

Rule 15.104 - Solid Fuel Burning Device Penalties

(1) Notwithstanding the provisions of Rule 15.102, a person who violates a provision of Chapter 9 (Solid Fuel Burning Devices) is guilty of a criminal offense and subject, upon conviction, to a fine not to exceed five hundred dollars ($500.00). Each day a violation continues constitutes a separate offense.

(2) Notwithstanding the provisions of Rule 15.103, any person who violates any of the provisions of Chapter 9 is subject to a civil penalty not to exceed five hundred dollars ($500.00). Each day a violation continues constitutes a separate violation. The civil penalty is in lieu of the criminal penalty provided for in Rule 15.102, and may be pursued in any court of competent jurisdiction.

(3) (a) The civil penalty or criminal fine for a violation of the same provision of Rules 9.103, 9.104, and 9.302 during any burning season as defined in Chapter 9 is:

First Violation - Fifty Dollars ($50)
Second Violation - Two Hundred Fifty Dollars ($250)

Third or Subsequent Violation - Five Hundred ($500)

(b) Penalties for violations of Rule 9.202 must not be less than five hundred dollars ($500.00) per offense.

Rule 15.105 - Non-Compliance Penalties

(1) Except as provided in Section (2), the department shall assess and collect a noncompliance penalty from any person who owns or operates:
(a) a stationary source (other than a primary nonferrous smelter that has received a nonferrous smelter order under 42 U.S.C. 7419), that is not in compliance with any emission limitation specified in an order of the department, emission standard, or compliance schedule under the state implementation plan approved by the EPA;

(b) a stationary source that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under 42 U.S.C. 7411, 7412, 7477, or 7603;

(c) a stationary source that is not in compliance with any other requirement under this Program or any requirement of subchapter V of the FCAA, 42, U.S.C. 7661, et seq.; or

(d) any source referred to in Sections (1)(a) – (c) that has been granted an exemption, extension, or suspension under Subsection (2) or that is covered by a compliance order, or a primary nonferrous smelter that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if such source is not in compliance under such extension, order or suspension.

(2) Notwithstanding the requirements of Section (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of Section (1) through Section (14) with respect to a particular instance of noncompliance that:
(a) the department finds is de minimis in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 USC 7420(a)(2)(B) of the Federal Clean Air Act.

(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, an administrative review as provided for in Chapter 14.

(4) The amount of the penalty that shall be assessed and collected with respect to any source under Section (1) through Section (14) shall be equal to:

(a) the amount determined in accordance with the rules adopted by the Control Board, which shall be no less than the economic value which a delay in compliance after July 1, 1987, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under Section (4)(a).

(5) To the extent that any expenditure under Section (4)(b) made during any quarter is not subtracted for such quarter from the costs under Section (4)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(6) If the owner or operator of any stationary source to whom notice is issued under Section (10) does not submit

a timely petition under Section (10)(a)(ii) or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(7) Any person who fails to pay the amount of any penalty assessed under this rule on a timely basis shall be required to pay an additional quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

(8) Any non-compliance penalty required under this rule shall be paid in quarterly installments for the period of covered noncompliance. After the first payment, all quarterly payments shall be equal and determined without regard to any adjustment or any subtraction under Section (4)(b).
(a) The first payment shall be due 6 months after the date of issuance of the notice of noncompliance under Section (10) with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for the preceding period within the period of covered noncompliance for such source.

(b) For the purpose of this rule, "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under Section (10) and ends on the date on which such source comes into, or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

(9) The department shall adjust the amount of the penalty or the payment schedule proposed by such owner or operator under Section (10)(a)(i) if the department finds after notice and opportunity for a hearing that the penalty or schedule does not meet the requirements of this rule.
(a) Upon determination that a source is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment of the penalty within 180 days after such source comes into compliance and:
(i) provide reimbursement with interest to be paid by the county at appropriate prevailing rates for overpayment by such person; or
(ii) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

(10) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to Section (1) which is not in compliance as provided in that section, within thirty (30) days after the department has discovered the noncompliance.
(a) Each person to whom notice has been given pursuant to Section (10) shall:
(i) calculate the amount of penalty owed (determined in accordance with Section (4)(a) and (b) and the schedule of payments (determined in accordance with Section (8) for each source), and within forty-five (45) days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or
(ii) submit to the Control Board a petition within forty-five (45) days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under Section (2) with respect to a particular source.

(b) Each person to whom notice of noncompliance is given shall pay the department the amount determined under Section (4) as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to Section (10)(a)(ii).

(11) The Control Board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than ninety (90) days after the receipt of any petition under Section (10)(a)(ii) with respect to such source. If the petition is denied, the petitioner shall submit the material required by

Section (10)(a)(i) to the department within forty-five (45) days of the date of the decision.

(12) All noncompliance penalties collected by the department pursuant to this rule shall be deposited in a county special revenue fund until a final determination and adjustment have been made as provided in Section (10) and amounts have been deducted by the department for costs attributable to implementation of this rule and for contract costs incurred pursuant to Section (6), if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the County General Fund.

(13) In the case of any emission limitation, emission standard, or other requirement approved or adopted by the Control Board under this Program after July 1, 1979, and approved by the EPA as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under Rule 15.102 (Criminal Penalties) and Rule 15.103 (Civil Penalties) shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.

(14) Any orders, payments, sanctions, or other requirements under this rule shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this Program and shall in no way affect any civil or criminal enforcement proceedings brought under Rule 15.102 (Criminal penalties) or Rule 15.103 (Civil penalties). The noncompliance penalties collected pursuant to this rule are intended to be cumulative and in addition to other remedies, procedures and requirements authorized by this Program.

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Missoula Public Health
City-County Health Department

Missoula City-County Health Department
AIR QUALITY PROGRAM
301 West Alder Street | Missoula MT 59802-4123
www.missoulacounty.us/HealthDept
Phone | 406.258.4755
Fax | 406.258.4781

Missoula City-County Air Pollution Control Board Hearing on February 20, 2020
Missoula City-County Health Department Response to Comments

April 21, 2022

1. Impact Zone M should be redrawn so that it does not include Evaro Valley or the Flathead Reservation. The Air Program Rules do not apply on the reservation and Evaro Valley air flows north and not into the Missoula Valley.

The Department agrees that the definition of Impact Zone M should be changed to exclude the Flathead Reservation as the air program rules do not apply on the reservation. When dispersion is poor for the Missoula Valley, dispersion will frequently be poor for the Evaro Valley. Therefore, the parts of the Evaro Valley outside the Flathead Reservation should be kept in Impact Zone M.

2. Need more wood stove use educational efforts, wood stove inspections, and fuel requirements.

These ideas are outside the scope of this rule making process. National and local educational efforts, such as the EPA's Burn Wise program, have very detailed information on how to operate a wood stove and how wood should be seasoned before use. Wood stove and fuel inspections would be good for safety reasons and verification of cleaner burning habits, however these efforts would greatly increase the resources needed by the department and there has been little interest from the public

3. Realtors should not act as inspectors for the Department woodstove program.

The Department met with representatives of the Missoula Organization of Realtors to identify an alternative solution to the original proposal. The Missoula Organization of Realtors and the Department are currently working on an MOU to solidify ways that realtors can aid in ensuring our community has and maintains healthy air quality. The Missoula City-County Health Department appreciates Realtor's efforts with this effort and has worked with the Missoula Organization of Realtors to streamline their involvement since the air regulations were enacted in 1994.

4. The Certificate of Compliance should not be required for every change of ownership since most of the property within the Air Stagnation Zone is already in compliance.

Despite Certificates of Compliance and wood stove removal requirements being in place since 1994, the Department continues to find properties that are for sale and have sold since 1994 where wood stoves remain installed. The current draft of proposed rules requires all stoves, even previously permitted ones, to be removed on sale. The clarity in understanding that all wood stoves in the air stagnation zone must be removed on sale will decrease confusion and aid realtors in conveying this information. After discussions with the Missoula Organization of Realtors, this version of the rules does not require a Certificate of Compliance. Instead, the realtors suggested a voluntary disclosure to be distributed within the air stagnation zone.

5. Rules to reduce pollution from high emitting wood-burning fireplaces should be included in this rule re-write. While generally unused, fireplaces generate a large amount of particulate pollution when used. Fireplaces should not be grandfathered in forever.

The Missoula City-County Health Department (Department) agrees that when used, fireplaces produce more pollution than a wood or gas stove. Removal of a fireplace, however, is not reasonable since fireplaces are built of masonry and are structurally part of the house; fireplace removal cost could be extremely high. New houses may not be built with fireplaces.

Other possible options to address existing fireplaces constructed in the Missoula Air Stagnation Zone prior to 1986 include not using the fireplace, plugging the chimney, or converting to natural gas or pellets. The Department will consider including this information in outreach efforts.

6. It is time for all stoves to be removed. Comments support the proposed changes to the Missoula City-County Air Pollution Control Program and support changes that will decrease the number of wood and pellet burning devices in the Air Stagnation Zone.

The proposed air rules will not immediately remove wood stoves that exist in the Missoula Air Stagnation Zone, but as properties change ownership the number of wood stoves will decline. The Department recommends that the option to install pellet burning devices in the air stagnation zone be maintained as it provides an alternative to electricity and natural gas while contributing significantly less pollution than wood stoves.

7. Chapter 9 (solid fuel burning devices) particulate matter emissions limits should be expressed in heat output lb/MMBTU (pounds per million British Thermal Units) or g/10,000 BTU (grams per 10,000 British Thermal Units) instead of grams per hour.

Federal emission testing results for smaller residential scale solid fuel burning devices (wood and pellet stoves for example) give results based on grams per hour. The Department recommends that emission limits for wood and pellet stoves be kept at grams per hour since the national test are designed to find an average emission rate based on grams per hour. Grams per hour is the emission rate readily available to the consumer and the wood stove vendors.

Proposed rule 9.204(c) and 9.205(b) for outside the Missoula Air Stagnation Zone already set emission limits based on lbs/MMBTU or g/10,000 BTU heat input. These emission limits apply to hydronic heaters and other devices.

8. Allow pellet boilers with heat input between 150,000 and 1 MMBTU/hour into the Missoula Air Stagnation Zone with an emission limit of 0.10 lb/MMBTU. Require that the pellet boilers use an electrostatic precipitator (ESP) or equivalent control device to reduce particulate emissions.

The Department agrees that pellet boilers that meet specific emissions criteria can be installed inside the air stagnation zone. With the 2015 NSPS there is a federally approved testing method for these types of devices and the air program already allows pellet stoves and units over 1 million BTU per hour heat input to be constructed and installed in the air stagnation zone. Allowing pellet boilers that are 2020 NSPS compliant inside the air stagnation zone is equivalent to the other devices already allowed for installation.

9. Installation of clean burning wood stoves should be allowed inside the Missoula Air Stagnation Zone. Clean burning solid fuel burning devices could be restricted to automated solid fuel burning devices and single burn rate devices. This would allow people to heat their homes with a more carbon neutral heat source than natural gas or electricity.

Climate change is a threat to the local and global environment and striving for reduced CO2 emissions into the atmosphere is important. The Missoula Valley has a confined air shed with frequent winter inversions and a growing population. When looking at the installation of new solid fuel burning devices in the Missoula Air Stagnation Zone, the global environment as well as the unique conditions found locally were considered.

The wood stove testing methodology used by the EPA to certify wood stoves was designed as a repeatable test that would give a relative comparison between stoves; the test was not designed to give actual emissions rates achieved by the customers who use the stoves in their homes or businesses. Particulate emissions from a stove operated by the customer vary greatly based on fuel shape, species of wood used as fuel, fuel moisture content, stove operation, stove design, and maintenance of the stove.

To permit the installation of potentially hundreds of wood stoves in the Missoula Air Stagnation Zone would be a gamble with Missoula's air quality and the public's health. Our experience with the 2012-2014 Seeley Lake wood stove change out program has shown that newer EPA certified stoves can burn cleaner than older wood stove designs, but violations of the $PM_{2.5}$ National Ambient Air Quality Standards from EPA certified devices still occur (January 2017 had 15 days over the daily $PM_{2.5}$ standard). The winter of 2021-2022 had seven days over the daily standard.

As part of the rule-making process, the Department must propose rules that are as stringent as existing rules. Currently, the rules only allow pellet stoves that emit 1 gram per hour particulate matter or less in the Missoula Air Stagnation Zone. Based on testing methods for wood stoves, the Department would not be able to prove that the installation of stick wood stoves is as stringent as the current rule which only allows pellet stove installations in the Missoula Air Stagnation Zone.

The Department does not recommend that stick type wood stove installation be allowed in the Missoula Air Stagnation Zone. Pellet stoves and boiler units over 1 million BTU heat input are wood burning options available in the Missoula Air Stagnation Zone. The Department has proposed in this rule packet that the installation of low emitting pellet boilers be allowed in the air stagnation zone.

10. Fireplaces in the Missoula Air Stagnation Zone should be replaced with New Source Performance Standard (NSPS) 2020 compliant automated wood stoves or single burn rate devices.

In the residential setting, automated and single burn rate wood stoves may likely have lower emissions than other NSPS 2020 compliant wood stoves. Both types of devices do take some user variations out of the operation. However, emissions in the residential setting will usually be higher than the lab certification results because of varied moisture content, different wood species burned, and the amount of fuel loaded.

Another factor to keep in mind is that while modern wood stoves are cleaner burning than fireplaces, wood stoves are used much more frequently than fireplaces because they do provide space heat. Fireplaces provide very little heat to a house and tend to be used for aesthetic purposes rather than for daily heating. The net effect is that wood stoves replacing fireplaces could easily produce more $PM_{2.5}$ in the air because of the increased use for heating purposes.

The 2000 Missoula Carbon Monoxide Emission Inventory estimated that 2,689 fireplaces exist in the Missoula Air Stagnation Zone. These fireplaces are in homes constructed prior to 1986. With thousands of existing fireplaces concentrated in the older neighborhoods in the Missoula Air Stagnation Zone, allowing wood stoves to replace fireplaces could result in thousands of new wood stove installations.

Current $PM_{2.5}$ National Ambient Air Quality Standards are 35 $\mu g/m^3$ for the 24-hour average and 12 $\mu g/m^3$ for the annual average. The World Health Organization recommends that the annual average $PM_{2.5}$ levels not exceed 10 $\mu g/m^3$ and that the 24-hour average not exceed 25 $\mu g/m^3$.

In their January 2020 final Policy Assessment for the Review of the National Ambient Air Quality Standards for Particulate Matter, EPA staff concluded: “When taken together, we reach the conclusion that the available scientific evidence, air quality analyses, and the risk assessment, as summarized above, can reasonably be viewed as calling into question the adequacy of the public health protection afforded by the combination of the current annual and 24-hour primary $PM_{2.5}$ standards.” In the final PM Policy Assessment (PM PA), EPA staff advised that available information suggests that an annual primary $PM_{2.5}$ standard in the range of 8 micrograms per cubic meter ($\mu g/m^3$) to <10 $\mu g/m^3$ (versus the current standard of 12 $\mu g/m^3$) is supported and a 24-hour $PM_{2.5}$ standard as low as 30 $\mu g/m^3$ (versus the current standard of 35 µg/m3) is supported.

Missoula’s annual $PM_{2.5}$ averages between 2013 and 2020 are in the table below. This data does include wildfire smoke. $PM_{2.5}$ data collected at the Missoula Boyd Park site shows how close Missoula can get to the current $PM_{2.5}$ standards and, based on current scientific information, that $PM_{2.5}$ concentrations are high enough to impact public health.

Annual $PM_{2.5}$ Average – Missoula Boyd Park

Year	2013	2014	2015	2016	2017	2018	2019	2020
$PM_{2.5}$	8.2	6.9	10.9	7.3	12.5	8	7.2	7.6

When the right weather conditions are in place over western Montana or the Missoula Valley, the 24-hour $PM_{2.5}$ standard can be threatened. Between January 7-18, 2017, daily $PM_{2.5}$ values of 27.7, 30.9, 33.6, 34.3, 36.4, 32.9 and 29.3 $\mu g/m^3$ were measured in Missoula. All 7 of these values are above the World Health Organizations recommended daily ceiling of 25 $\mu g/m^3$.

As shown in chemical mass balance studies, residential wood combustion for space heating is one of the major sources of wintertime particulate matter in the Missoula Valley. With the Missoula Valley close to exceeding the National Ambient Air Quality Standard for $PM_{2.5}$, the installation of wood stoves in the Missoula Air Stagnation Zone would likely increase the number of days that the PM2.5 concentrations are elevated above recommended daily ceilings and harm public health. The Department must protect public health and plan for lower $PM_{2.5}$ standards in the future to avoid a non-attainment area designation.

The Department understands that many people would like to use wood stoves for heating to reduce their carbon footprint, for aesthetics, or financial savings. In the Missoula Air Stagnation Zone, we need to balance climate change concerns with the impacts on public health from wood burning. In a confined air shed with over 80,000 people and growing, methods for heating that do not generate particulate pollution will need to be selected. Some alternatives available to reduce carbon footprint include weatherization, efficient heat pumps, district heating or pellet stoves.

11. Allow wood stoves back into the Missoula Air Stagnation Zone but require annual inspections and require fuel meet minimum moisture content levels less than 25%. Operator error is eliminated with automated wood stoves and single burn rate devices.

See previous response to comment.

The Department does not have sufficient resources to pursue this. With a growing population, this would likely still result in unhealthy air quality.

12. In the Air Stagnation Zone, encourage legally installed wood stoves to be replaced with NSPS 2020 compliant automated wood stoves or single burn rate devices.

The Department does not support the installation of wood stoves in the Missoula Air Stagnation Zone. The proposed rules would require the removal of every wood stove currently installed in the air stagnation zone when property changes ownership. If the air program allowed some people to new install wood stoves to replace existing devices, many people would consider it unfair that they could not install a woodstove just because they currently do not have a legal device. Enforcement of allowing a few specific people, and not everyone, to install new stoves would be impractical.

Wood stove installations are allowed in the county outside the air stagnation zone.

13. The proposed county-wide standard for wood burning devices between 250k and 1.0 million btu/hr is 0.2 lb/MMBTU or 0.9 g/10,000 BTU. This brings it into compliance with EPA's NSPS 2020 standard. See Rule 9.205(1)(c). We feel this should extend down to 150k BTU and the 250k stated.

The Department agrees that this comment can be incorporated into the proposed rules. With the 2020 New Source Performance Standards for hydronic heaters, furnaces and other central heaters, specifying heat input levels in the rules is no longer required.

14. In the air stagnation zone, the rule is silent on all devices except pellet stoves. Therefore pellet, wood chip and chunkwood boilers, furnaces, such devices are completely excluded even though they can achieve comparable or lower emission rates listed on the approved pellet stove list.

The proposed rules have been changed to allow the installation of pellet boilers and pellet furnaces in the Missoula Air Stagnation Zone if specific emission criteria are met. The proposed rules do not allow wood chip or chunkwood devices.

Current rules allow the installation of chip or chunk wood units when the heat input exceeds 1 million BTU per hour. The possibility exists in the air stagnation zone for small neighborhood, commercial to larger wood chip/chunk based district heating units. The benefit of the larger scale units is that their size can provide higher efficiencies and all units would go through the industrial permitting and inspection process.

The Department is opposed to the installation of smaller non-pellet fueled solid fuel burning devices into the air stagnation zone. Over the decades the technology has improved, and emissions appear to have been reduced for current devices when compared to devices made in decades past. However, the Department has concerns with potentially allowing hundreds of smaller non-pellet boilers into the air stagnation zone when staying under the daily $PM_{2.5}$ standard is a struggle in the winter when high pressure ridges trap pollution close to the valley floor. Variability in wood species used, fuel moisture content, customer operation and maintenance of these types of devices can result in higher emissions than the results found in the testing procedures.

As Missoula's population continues to grow, the amount of particulate matter that each person can put into the air shed without exceeding the particulate standards decreases. Other sources of fine particulate matter, such as vehicle exhaust, nitrogen oxides from space heating, and vehicle break wear will increase as the valley population grows. When changing the solid fuel burning device rules, the increase in other sources of fine particulate matter as the population grows needs consideration. We also need to keep in mind that based on current scientific studies there is a possibility that the particulate standards may become more stringent.

To maintain air quality in the Missoula Valley and the air stagnation zone, it is important that the cleanest methods of space heating be used. While newer chip and wood burning devices may be cleaner than older devices, the Department recommends that pellet fired devices,

energy efficient measures and heat pumps be emphasized in the air stagnation zone and that chunk wood and wood fired solid fuel burning devices remain restricted.

15. Modify the pellet stove definition by removing “and is a free-standing room heater or fireplace insert.”

The Department agrees that this change can be incorporated into the rules.

16. Add a definition for “automated solid fuel burning device.”

This definition is not required since these devices are included under the definition of “solid fuel burning device.” Outside of the Missoula Air Stagnation Zone, an automated wood stove may be installed under the proposed rules.

17. Add a definition for “single burn rate” wood device – a stove, insert or fireplace that does not have an operator damper to control air flow.

This definition is not required since these devices are included under the definition of “solid fuel burning device.” Outside of the Missoula Air Stagnation Zone, a single burn rate wood stove may be installed under the proposed rules.

18. Add language regarding the permissible emissions for the 150,000 to 1 million BTU/hr automated/single burn rate devices similar to 9.205(1)(c) except reduce the allowable emission to 0.1 lb/MMBTU and the installation of an electrostatic precipitator or equivalent control device the same as for Chapter 6.502 equipment between 1 and 10 million BTU.

See previous responses to comments.

19. Rules to limit the stench from the city wastewater treatment plant and composting operation should be part of the rule updates. All new housing development in the valley should cease until the city-wide odor problem is fixed.

Chapter 12 of the Missoula City-County Air Pollution Control Program already states that odors may not create a public nuisance past their property lines. The Missoula City-County Health Department has been involved in odor complaints several times over the years. The Department feels that this comment is already addressed in existing rules. Limiting new housing development is outside the scope of the air pollution control program rules.

20. Firepits and recreational fires should not be allowed in city limits and businesses should not be allowed to sell firepits.

Missoula Municipal Code Title 8 Health and Safety (8.60 Outdoor Burning Regulations) prohibits recreational fires and list the city fire department as the lead enforcement agency for this rule. Any fire that creates a nuisance can be ordered to be put out. City police and the Department may also enforce the city outdoor burning rules. This comment is addressed in city code and the Department does not recommend this comment be incorporated into the proposed rule changes. Chimeneas and other “fire pits” can be used outside city limits and the Department does not recommend a rule against the sale of chimeneas and other firepits.

21. Recreational fires fueled by gas should be exempt from the outdoor burning definition. The prohibition of recreational fires during air alerts should specify “solid fuel” recreational fires. One could prohibit gaseous fuel recreational fires during Stage III Emergency and Stage IV Crisis.

The Department recommends that this comment be incorporated into the rule updates to clarify that liquid or gas fires are not considered outdoor burning under these rules. The Department does not recommend that gas or liquid fueled fires be prohibited during Stage III Emergencies and Stage IV Crisis since emissions from these activities is minimal and the air pollution control program does not typically regulate small gas or liquid fired devices.

22. Does the Department have any specific plans to limit CO2 emission within the county? The Department should look at methods to utilize wood slash piles as a source of electrical energy.

While limiting CO2 emissions should be done to minimize climate change impacts, limiting CO2 emissions and requiring slash piles be used for electrical generation are outside the scope of the air pollution control program rules. Where possible, the Department supports CO2 reduction strategies and the clean disposal of wood slash piles.

23. Missoula County major burners should not be required to call the outdoor burning hotline on the day that they wish to burn since coordination of all burns is already done at the online Airshed Management System.

The Department agrees that this comment should be incorporated into the rule updates.

Missoula Public Health
City-County Health Department

Missoula City-County Health Department
AIR QUALITY PROGRAM
301 West Alder Street | Missoula MT 59802-4123
www.missoulacounty.us/HealthDept
Phone | 406.258.4755
Fax | 406.258.4781

Summary and Explanation of Changes to the
Missoula City-County Air Pollution Control Program
For
Interested Parties, Missoula Air Quality Advisory Council, Missoula City-County Air Pollution Control Board, Missoula City Council and Missoula Board of County Commissioners

April 21, 2022

Table of Contents Updated

List of Acronyms Updated

Chapter 1: Program Authority and Administration

- **Rule 1.105(5)** inserts a missing punctuation mark, a period.

Chapter 2: Definitions

- **Rule 2.101(22)** updates definition of Hazardous Waste to be consistent with state rules. Current citation no longer exists in state rules.
- **Rule 2.101(23)** removes the Flathead Reservation from the Impact Zone M definition. The Missoula City-County Air Pollution Control Program has no jurisdiction in the Flathead Reservation. This change removes the incorrect impression that the Air Program rules applied on the Flathead Reservation.
- **Rule 2.101(49)** inserts missing letter.

Chapter 3: Failure To Attain Standards

- **Rule 3.101** replaces a potentially mis-leading word in the opening sentence.
- **Rule 3.103** corrects reference errors.

Chapter 4: Missoula County Air Stagnation and Emergency Episode Avoidance Plan

- **Rule 4.104(1, 2, 3 and 4)** corrects formatting and spelling errors.
- **Rule 4.108(1)** corrects grammatical errors.
- **Rule 4.108(2)(a)** changes the word shall to the legally correct must.
- **Rule 4.108(2)(d)** is a new rule that requires recreational fires to comply with applicable requirements of chapter 7. This rule change would restrict recreational fires in certain areas during air alerts.
- **Rule 4.109(2)(d)** is a new rule that requires recreational fires to comply with applicable requirements of chapter 7. This rule change would restrict recreational fires in certain areas during air warnings.
- **Rule 4.109(4)** corrects formatting.
- **Rule 4.113** corrects grammar error.

Chapter 5: General Provisions

- **Rule 5.108(1)** clarifies how the Missoula City-County Air Pollution Control Board can change fees in

the Air Pollution Control Program.

- **Rule 5.108(2)** removes extraneous comment that is not part of the rules**.**
- **Rule 5.111(1)** places the state requirements specified in Montana Code Annotated 75-2-301 for local air program rule changing requirements into the Missoula City-County Air Pollution Control Program.
- **Rule 5.111(2)** is changed to make this rule consistent with Rule 5.111(1). This rule now clearly states that the Board of County Commissioners and the City Council may approve or veto the Control Board's changes to the Air Rules after a public hearing.

Chapter 6: Standards for Stationary (Industrial) Sources

- **Rule 6.103(4)** allows the department to grant up to two 12-month extensions to an air quality permit when construction, installation, or alteration was not completed within 36 months of the initial issuance of the air quality permit.
- **Rule 6.107(1)** corrects punctuation errors.
- **Rule 6.505(2)** corrects a superscript error.
- **Rule 6.604** removes reference to a state rule that no longer exist and makes local rules consistent with current state rules.

Chapter 7: Outdoor Burning

- **Rule 7.101(1-13)** renumbered to 7.101(3-15).
- **Rule 7.101(1)** adds a definition for air curtain burners
- **Rule 7.101(2)** adds a definition for air curtain destructors
- **Rule 7.101(4)** removes the reference to the department's outdoor burning hotline while keeping the requirement outdoor burners follow the department's outdoor burning restrictions
- **Rule 7.101(11)** clarifies that recreational fires burning gaseous fuel are not considered outdoor burning
- **Rule 7.101(13)** corrects a punctuation error.
- **Rule 7.102(1)** updates pronoun to current standard.
- **Rule 7.104(1)** removes prescribed wildland burning from the list of activities that can be done year-round and updates letters to be consistent with the removal of point (a).
- **Rule 7.104(4)** specifies and clarifies when prescribed wildland burning can be done.
- **Rule 7.104(5)** updates numbering to accommodate the addition of 7.104(4).
- **Rule 7.105(1)** corrects formatting.
- **Rule 7.105(2)** removes language that is redundant with other parts of chapter 7 and this removal clarifies the rules.
- **Rule 7.105(3)** replaces the outdoor burning hotline as the department's mechanism for announcing burn restrictions with the department's outdoor burning website and the major and minor burners' burn approval systems
- **Rule 7.106(2)(b)** updates language without changing the substance of the rule.
- **Rule 7.107(6)** specifies the process for how major burners may conduct wildland outdoor burning during December, January or February. Process will include written request that states why the burn must be done in the winter months and the health department gives authorization for the burn to occur.
- **Rule 7.107(3)(c)** removes reference to the outdoor burning hotline while still requiring major burners to adhere to the department's burn restrictions.
- **Rule 7.110(1)(d)** allows the outdoor burning of natural vegetation generated off-site to be granted a conditional outdoor burning permit if the burning will occur via the temporary use of an air curtain burner or an air curtain destructor.
- **Rule 7.110(2)(c)** makes an exception to allow conditional outdoor burning permits to be issued for burns inside the Air Stagnation Zone if the burning will take place in an air curtain burner or an air curtain destructor.

- **Rule 7.116** is a new rule that limits recreational fires during air pollution alerts, warnings, emergencies and crises.

Chapter 8: Fugitive Particulate

- **Rule 8.203(3)(b & c)** corrects reference errors.
- **Rule 8.203(3)(e)** removes an extra word.
- **Rule 8.208(1)** allows the health department to approve alternative areas for paving that are the same size and usage as an area required to be paved by other sections of Chapter 8.

Chapter 9: Solid Fuel Burning Devices (Wood Stoves)

- **Rule 9.102(3)** defines the term "Central Heater."
- **Rule 9.102(6)** changes the definition of "EPA Method" to reference all of subpart AAA instead of just three sections and adds in the new 40 CFR Part 60 Subpart QQQQ. These subparts cover the federal testing methods for woodstoves, pellet stoves, hydronic heaters, and furnaces. Fireplaces are still not covered by a federally required testing method or rules.
- **Rule 9.102(10)** adds in a definition for a Seeley Lake Wood Stove Zone.
- **Rule 9.102(11)** adds the word "disposal" to the definition of what is a solid fuel burning device.
- **Rules 9.102(4, 5, 6, 7, 8, 9, 10, 12, 13 and 14)** are renumbered.
- **Rule 9.201(1)** adds the term Chapter 9 to the rule for clarification.
- **Rule 9.203(1)** edited for clarification and specified what pellet boilers could be installed in the Missoula Air Stagnation Zone. Updated rule to be consistent with the 2020 EPA Method Subpart AAA and Subpart QQQQ.
- **Rule 9.203(2)** corrects a spelling error.
- **Rule 9.204** is a new rule that specifies what solid fuel burning devices may be installed inside the Seeley Lake Wood Stove Zone.
- **Rule 9.205** renumbered rule and updated rule to coordinate and mesh with the 2015 New Source Performance Standards for wood stoves. This rule does not apply for new solid fuel burning device installation in the Missoula Air Stagnation Zone nor the Seeley Lake Wood Stove Zone.
- **Rule 9.205(1)(c)** fixes a grammar error, change .9 to 0.9.
- **Rule 9.205(4)** edited for clarification.
- **Rules 9.206 through 9.212** renumbered.
- **Rule 9.207(3 and 7)** inserted missing word "Impact" for clarification.
- **Rule 9.401(3)** updates list of rules that apply to this rule.
- **Rule 9.501(1)** would require the removal of solid fuel burning devices in the Missoula Air Stagnation Zone when a property is sold, transferred or conveyed. Previous version of the rule required solid fuel burning device removal only when a property was sold. The new requirement for property would now apply to inherited property and other changes of ownership. This change makes Rule 9.501 consistent with the rest of Chapter 9.
- **Rule 9.501(2)** replaces the word "sold" with the phrase "sold, transferred or conveyed" for the list of devices that can remain when a property is sold, transferred or conveyed. The revised rule would also remove the grandfathering in of class I wood stoves that were installed between 1986 and 1994. Upon change of ownership in the Missoula Air Stagnation Zone, all wood stoves would need to be removed from a property when a property changes ownership.
- **Rule 9.501(3 - 8)** is deleted. Completion of the Certificate of Compliance Form would no longer be required when a property is sold, transferred or conveyed in the Missoula Air Stagnation Zone.
- **Rule 9.601** fixes a grammatical error.

Chapter 10: Fuels

- **Rule 10.102(1)** corrects a clerical error.

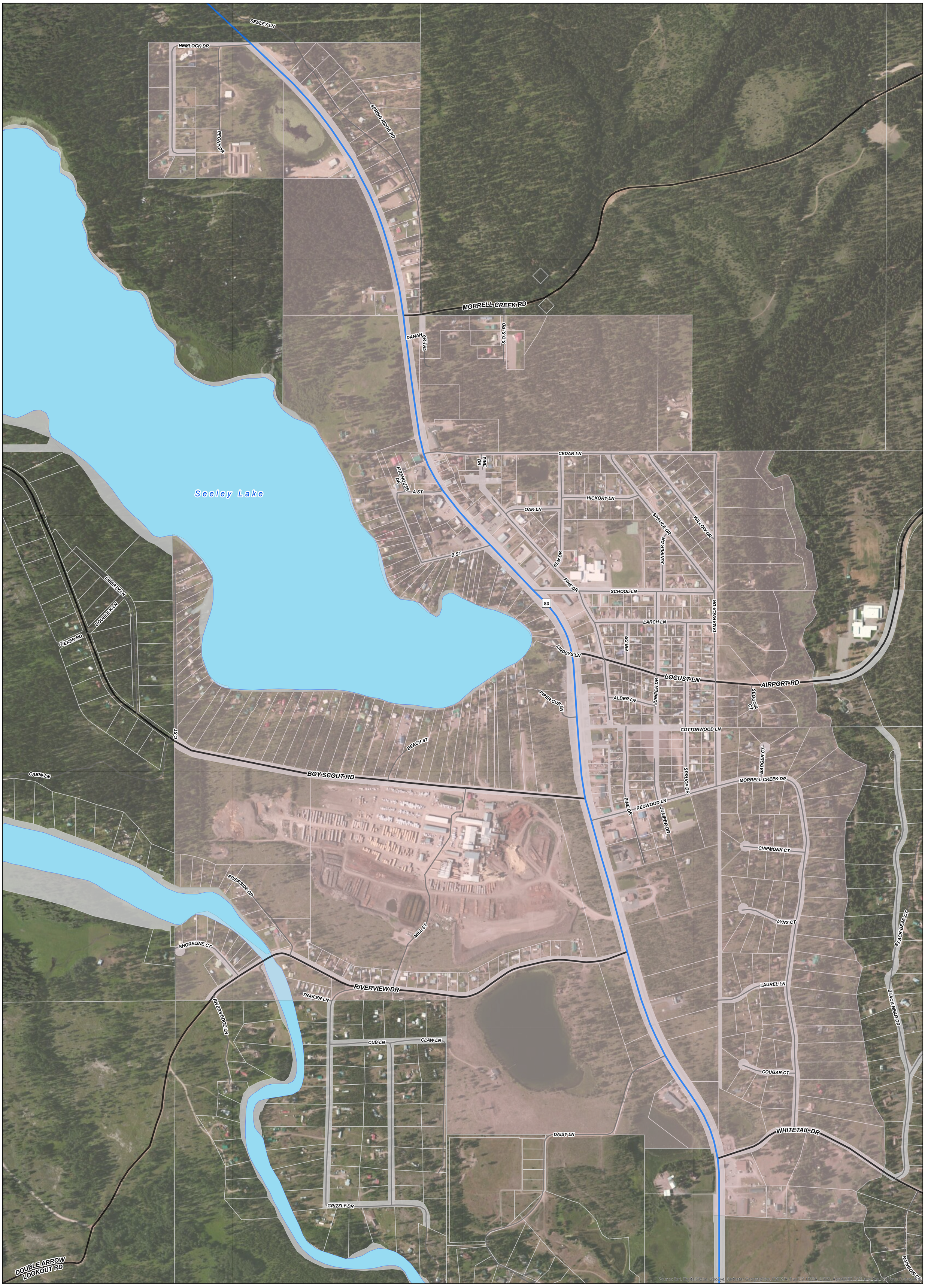
- **Rule 10.105(1)** corrects a spelling error.
- **Rule 10.109(1)** removes the requirement to annually sample 20% of all regulated gasoline storage tanks and gasoline blending facilities for the oxyfuel program. Blending facility registration fees still required to defray department costs associated with assuring compliance with the oxygenated fuels program.
- **Rule 10.110** added to specify that the oxygenated fuels program, Rules 10.103 through 10.109, ceases when authorization to end the program is received by the county.
- **Rule 10.111** is renumbered.
- **Rule 10.111(2)** is added to update the federally required contingency measures. If the oxygenated fuels program ever ceases, this rule makes possible the re-instatement of the oxygenated fuels program if the carbon monoxide national ambient air quality standard is exceeded because of vehicular traffic.

Chapter 13: Variances

- **Rule 13.104** fixes a spelling error.

Chapter 14: Enforcement and Administrative Procedures

- **Rule 14.107(1)** specifies a time limit of 15 days for a person to request a hearing before the Control Board if they disagree with an administrative review conclusion/decision.
- **Rule 14.107(2)** fixes a spelling error.



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Seeley Lake Proposed Wood Stove Zone