

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--AuthorityConstruction](#)
- [13.26.011 Administrative Rules Authorized](#)
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**13.26.010 SHORT TITLE--APPLICABILITY--CONSTRUCTIONAUTHORITY.** 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 statute 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 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 applicable 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 preceding 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.

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.

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

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<sub>2</sub>CL<sub>4</sub>) - 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)

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

**Commented [MR10]:** (subjective)

**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

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

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.

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

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

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.

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

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.

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

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

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

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 [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.

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

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.

**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”)

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

**Commented [MR27]:** (New)

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.

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

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. (

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

**13.26.040 POLLUTION PREVENTION REQUIREMENTS – REPEALED**

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

A.  
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||  
F

**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.

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

H.

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

**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

**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)

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.

**Commented [MR39]:** (New)

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 [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)

K.

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

L.

**Commented [MR45]:** (Moved to Prohibitions)

### **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;

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

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.

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

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

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

Table 1: Constituent Limit for deicers

Parameter	Limit (mg/kg) <sup>1</sup>
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 <sup>2</sup>
PH	6.0- 9.0
Pesticides/herbicides	Based on DEQ-7 Standard <sup>3</sup>

<sup>1</sup> 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 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.
3. Following approval, any changes to deicer constituent limits or product formulations must be reviewed and approved prior to use.

**Commented [MR55]:** (REVISED for clarity)

**Commented [MR56]:** (REVISED for clarity)

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#### 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 with 13.26.032, 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.

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### **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.)

### **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 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

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**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:

APPROVED:

\_\_\_\_\_  
Martha L. Rehbein, CMC  
City Clerk

\_\_\_\_\_  
John Engen  
Mayor