

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:

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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 shall govern. 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 Missoula Valley Water Quality District is authorized to develop and enforce 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 and enforced pursuant to this section must be adopted by the Mayor pursuant to the provisions found in Chapter section 2.03.0202-03, Missoula Municipal Code to be enforceable within the city limits, the extraterritorial application of the Best Management Practices will be approved by the Water Quality District Board and the Missoula County Board of County Commissioners. This health ordinance is adopted by the Missoula City Council for enforcement inside the city limits. If both the Board of County Commissioners and the local health board approve the BMP manual, enforcement of this chapter extraterritorially within five (5) miles of the city limits, this manual 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.~~

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

13.26.020 LEGISLATIVE INTENT AND PURPOSE. In order to protect the Missoula valley's sole source of drinking water and surface waters in the Missoula Valley 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 ~~and to drinking water obtained by the use of private and public supply wells, and that certain activities involving the use of certain substances should be managed to prevent water contamination.~~
- B. Affirmative measures to prevent water pollution are the most effective means available to protect water quality.
- C. ~~In order to effectively protect surface and groundwater, l~~ 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~~ should 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 ~~ordinance~~ code and associated Best Management Practices, the following terms have the following meanings unless the context clearly indicates otherwise:

Aboveground Storage Tank (AST) - ~~Any one or combination of A~~ tanks 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: ~~Anti-icing means~~ 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 ~~Board of Directors of 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 ~~for perchloroethylene contaminated wastewater which removes perchloroethylene or other chlorinated solvents from a water-solvent mixture using carbon absorption and evaporates the remaining water.~~

Chemical Manufacturing Facility - A facility having a North American Industry Classification Code (NAICS Code) between 325180 and 325998 Standard Industry Class Code (SIC Code) between 2800 and 2899 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~~Department in accordance with section 13.26.060 of this ~~ordinance 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.~~3836~~.101, which serves at least ~~ten~~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.

~~Department - The Missoula Valley Water Quality District. (Added new definition of District)~~

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

Department – The Missoula City-County Health Department

Commented [MR6]: (Changed definition of Department to mean MCCHD (was formerly referring to the District and added a District definition)

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 with one or more of the following solvents to clean clothing or other materials: perchloroethylene; trichlorotrifluoroethane (CFC-113); CFC-11; Stoddard solvent; 1,1,1-Trichloroethane; HCFC 14 lb.; HCFC-123 lb.; and HCFC-225 lb.~~

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 ~~can washes~~ and ~~dry-dries garments-textiles~~ without transferring them and ~~potentially emit chlorinated solvent to the atmosphere.~~

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.

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 ~~generations 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, ~~and that areas required defined under Montana Hazardous Waste Administrative Rules in, A.R.M 17.54.10517.31.301, to have a hazardous waste management permit 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 ~~District Department~~ that is certified by the EPA or other appropriate certifying agency to complete testing.

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

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 after September 7, 1994, the effective date of this ordinance.

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 (C₂CL₄) - 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 natural 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 ordinance 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 ~~ten-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 ~~40-15~~ 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)

Reasonably Achievable Limit: A pollutant limit that is determined on a case by case basis to be reasonably achievable taking into account environmental, economic, and other factors and costs.

Commented [MR10]: (subjective)

Refrigerator Condenser: A vapor recovery system into which an air-a chlorinated solvent vapor stream is routed and the chlorinated solvent is condensed by cooling the gas-vapor stream 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 ~~substances that the Board determines,~~ following public review, may threaten Contamination of the Missoula Valley Aquifer, substance identified in this ordinance excluding substances used for personal household use. ~~The Board may, following public review and comment, remove a substance from the list of Regulated Substances.~~

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 environment 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 ~~and fertilizers~~ as defined in §80-8-102(30) MCA ~~and §80-8-102(2) 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. ~~The secondary containment structure or cell must:~~

- ~~a. be non-reactive and resistant to the materials contained;~~
- ~~b. prevent infiltration of any Regulated Substance into the ground in the event of a release from the primary storage container;~~
- ~~c. isolate the Regulated Substance from soils, injection wells, floor drains, or any other potential surface and groundwater entry point; and~~
- ~~d. contain at least 110% of the volume of the largest container, or 10% of the aggregate volume of all containers, whichever is greater.~~

~~A covered building or structure may fulfill the secondary containment requirements of this, provided the building or structure has an impermeable floor and walls and the release of a Regulated Substance would remain in the building or structure.~~

Commented [MR13]: (The specific design features listed in this definition were moved to section of the BMP manual that addresses minimum design standards)

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 - Precipitation runoff, snow melt runoff, and surface runoff and drainage as defined in 13.27.030.

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

Storm water Injection Well – A structure, pit or hole that primarily receives storm water runoff from paved areas, including, but not limited to, parking lots, streets, residential subdivisions, and highways

Commented [MR15]: .(Replaced this with the definition for “Dry well” 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.

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 - ~~The following 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, shall constitute the Threshold Quantity:~~

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. Waste oil - 1000 pounds or 100 gallons.~~
- ~~b. 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 New 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.

~~Threshold Quantities of substances may be established or revised by the Board, following public review and comment.~~

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 75-110-5403.

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 in accordance with Department standards 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.~~

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').

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 and educational institution research laboratories 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 storm-water or an Allowable Non-Stormwater Discharge to a municipal separate storm sewer system.
- D. Discharge storm-water from Tank Fueling Areas directly to storm drains (dry wells or inlets piped to outfalls).
- E. Discharge storm-water from Vehicle Fueling Areas to storm drains (dry wells 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.
- ~~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.~~
- H.
- ~~I. After the effective date of this ordinance, cAfter January 1, 2023, connect any structure to a well if the structure is within 200 feet of an existing Public Water Supply System.~~
- J. 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, section 13.26.040 (C) or (D) of this ordinance, or a Regulated Substance tank not meeting the requirements of section 13.26.03640 of the Missoula Municipal Code (G) of this ordinance within 1000 feet of a Community or Non-Transient Non-Community Water Supply System.

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)

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)

4.2. 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.

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

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)

13.26.040 POLLUTION PREVENTION REQUIREMENTS – REPEALED
(REVISED AND INCORPORATED into 13.26.32, 13.26.34 and the BMP manual)

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

13.26.040 Pollution prevention requirements.

- A. No product shall be distributed, sold, offered, or exposed for sale within the aquifer protection area if it contains Perchloroethylene in any quantity. Those products containing Perchloroethylene used at dry cleaning establishments and educational institution research laboratories are exempt from this provision of the, provided the person who owns, operates, or controls such facility obtains a pollution prevention permit from the Department, regardless of the quantity of Perchloroethylene handled at the facility.
- B. A person who owns, operates or controls a facility which handles Regulated Substances in an amount equal to or greater than the threshold quantities must submit an inventory and quantity of those Regulated Substances to the Local Emergency Planning Committee (LEPC) every year.
- C. A person who owns, operates or controls a new or replacement fueling facility must:
1. install and maintain an awning or canopy that prevents precipitation from falling on the vehicle fueling area(s) if surface releases of fuel from the vehicle fueling area could discharge to a storm water injection well; and
 2. design and install a storm water collection system for the facility which shall:
 - i) prevent the flow of fuel releases in the tank fueling area and vehicle fueling area from discharging directly to a storm water injection well; and
 - ii) collect and discharge storm water from areas outside of the tank fueling area and vehicle fueling area to a grass infiltration swale or otherwise provide for such storm water to be handled in a manner to reduce the potential for water contamination.
 3. The storm water collection design must be approved by the Department and permitted by the City of Missoula Public Works and Development Services prior to facility construction. The person owning, operating, or controlling the facility must maintain any grass infiltration swale and any other approved device used to prevent releases in the vehicle and tank fueling areas from discharging to a storm water injection well. The facility shall keep records of maintenance of the device at the facility to be viewed during Department inspections.
- D. A person who owns, operates or controls a fueling facility where surface releases of fuel from the vehicle or tank fueling area may discharge to a storm water injection well shall provide the following physical and procedural measures to prevent fuel releases:
1. breakaway hoses and nozzles shall be installed on all dispensers;
 2. emergency response equipment shall be kept on site to be used in the event of a release, including absorbent materials and spill containment covers for each storm water injection well which may receive discharge from a surface release; and
 3. An employee trained on how to respond to a release must be on site at all times during facility operation, except as provided in (a).
 - (a) A fueling Facility that provides 24-hour public access to fuel through a remote card-lock system is exempt from the requirement to have a trained employee on site at all times during facility operation if it provides the following:

Commented [MR31]: (Moved to Prohibited Activities)

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

- (1) Automatic pump shutoff when 50 gallons of gasoline or 250 gallons of diesel fuel have been dispensed;
- (1) Emergency phone access;
- (1) Signs posted to instruct public to call 9-1-1 in the event of a fuel release.

4. In addition to the above procedural and physical requirements, a person who owns, operates, or controls an existing fueling facility shall incorporate a release prevention section within the pollution prevention plan required under section 13.26.050 (B) of this. The release prevention section of the plan shall describe the steps or methods that will be taken to prevent fuel released at the tank and/or vehicle fueling areas from reaching a storm water injection well. The release prevention plan must be approved by the Department. Physical alterations or procedural changes required as a condition of the Department's approval must be completed or instituted within one year of the Department's approval.

E. A facility that handles a total quantity of any Regulated Substance in an amount equal to or greater than four times its threshold quantity must obtain a Pollution Prevention Permit, pursuant to section 13.26.050 of this.

F. A person who owns, operates or controls a facility at which a Regulated Substance (excluding petroleum products in underground storage tanks, in vehicle fuel tanks, at bulk petroleum storage facilities, and Regulated Substances sold for retail in a container equal to or less than 5 gallons capacity) equal to or greater than the threshold quantity is handled on the effective date of this shall provide secondary containment for that substance. A person who owns, operates, or controls a new facility at which a Regulated Substance (excluding petroleum products in underground storage tanks, in vehicle fuel tanks, at bulk petroleum storage facilities, and Regulated Substances sold for retail in a container equal to or less than 5 gallons capacity) equal to or greater than the threshold quantity is handled after the effective date of this must obtain Department approval of their plan for secondary containment prior to obtaining a building permit or first handling a Regulated Substance in an amount equal to or greater than its threshold quantity, whichever occurs first.

G. A person who owns, operates, or controls a facility at which a Regulated Substance equal to or greater than its threshold quantity is stored in any new or replacement underground storage tank system shall equip that system with double walled product piping, secondary containment of all ancillary equipment from the tank to the dispenser(s), tank release detection systems, and leak detectors on pressurized piping. Tank system design must be approved by the Department prior to obtaining a building permit. Such systems shall, at a minimum, meet the requirements described in A.R.M. 17.56.403 of the Montana Underground Storage Tank Regulations, as amended.

H. No person shall construct or operate an industrial commercial injection well at a new or existing facility unless said person obtains an Underground Injection Control Permit from the Environmental Protection Agency (EPA) or the Department. A person may be granted a permit from the Department or EPA if the owner, operator or controller demonstrates to the Department or EPA that the process wastewater does not contain a Regulated Substance at a concentration equal to or above its EPA primary maximum contaminant level for drinking water, EPA health advisory level, or the standard proposed in the Montana Numeric Water Quality Standards, (Circular WQB-7), whichever is lower, and the potential for water contamination is reduced by such other measures as the Department or EPA may require.

13.26.034 REGULATED SUBSTANCES AND POLLUTION PREVENTIONMANAGEMENT- 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

Commented [MR33]: (Contents of 13.26.040 C and D have been revised and moved to NEW Fueling Facility Section of the ordinance and BMP manual.)

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

Commented [MR35]: (Moved to Regulated Substances and Pollution Management – General Requirement)

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

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

- Carpet Cleaning
- Chlorinated Water Discharge
- Dry-Cleaning
- Fueling Facilities
- Livestock Housing
- Pressure Washing
- Restaurants and Food service
- Road Maintenance
- Trade Contracting
- Vehicle washing
- Well development

must comply with minimum required Best Management Practices. Implementation of alternative BMPs that achieve the intent of minimum BMPs ~~may~~^{must} 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~~^{must} 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. Secondary containment ~~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.~~

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 ~~after the effective date of this ordinance 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 Existing facilities 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 [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)

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

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

Bulk Petroleum Storage Facilities

~~A person who owns, operates, or controls a bulk petroleum storage facility shall:~~

- ~~1. During new or replacement construction, install all new or replacement piping aboveground;~~
- ~~2. Perform annual release response training exercises simulating the actions that will be taken during a release of fuel at the facility;~~
- ~~3. Have a person trained in the proper filling of aboveground 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 in such a manner to prevent the contamination of the Missoula Valley Aquifer. The monitoring system shall at a minimum include vapor monitors located at any valve and piping manifold that controls the flow of fuel to the tanks and from the tanks to the dispensers, and overfill alarms on any aboveground product fuel storage tank. The monitoring system must be staffed during tank filling operations. Any proposed monitoring system must be approved by the Department;~~
- ~~4. 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;~~
- ~~5. Cathodically protect buried metal piping and the bottom of aboveground tanks in accordance with guidelines contained in American Petroleum Institute (API) 651;~~
- ~~6. On or before January 1, 1996, and every five years thereafter, prepare a Contingency Plan outlining how personnel are to respond to a release of fuel at the facility. The plan shall also address alternative technologies which may prevent fuel from contaminating the Missoula Valley Aquifer, such as:
 - ~~a. installation of impermeable barriers or liners to prevent the vertical migration of released fuel to the aquifer;~~
 - ~~b. 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;~~
 - ~~c. installation of vapor monitoring devices at piping manifolds and valves to alert personnel of a release;~~
 - ~~d. installation of vapor monitoring wells within a secondary containment area of the aboveground tanks to be used to recover released fuel before it reaches the underlying aquifer;~~
 - ~~e. installation of a dedicated recovery tank outside a secondary containment area of the aboveground tanks that can be used to recover released fuel; or~~
 - ~~f. excavation of contaminated soils immediately after a release occurs.~~The Contingency Plan must be approved by the Department, and all physical or procedural changes required as a condition of the Department's approval of the Contingency Plan, shall be completed or instituted within two years of the Department's approval;~~
- ~~7. On or before January 1, 1998, and every 10 years thereafter, test the integrity of the shell of each aboveground tank in accordance with American Petroleum Institute (API) 653;~~
- ~~8. Install containment devices to prevent a surface release of fuel at the vehicle fueling area from discharging directly to a storm water injection well, or surface waters;~~
- ~~9. Secondarily contain all aboveground piping manifolds; and~~
- ~~10. On or before January 1, 2000, and every 10 years thereafter, test the integrity of the bottom of each aboveground tank in accordance with American Petroleum Institute (API) 653. The frequency of integrity testing of the bottom of each tank may be extended by the Department provided that the owner, operator, or controller of the bulk petroleum storage facility proposes an extended frequency in accordance with American Petroleum Institute (API) 653, the proposal is received by the Department within two years of the adoption of this ordinance, and the Department approves of the change in frequency of testing.~~

~~J. A person who owns, operates or controls a facility on which a public or private water well or monitoring well is abandoned after the effective date of this ordinance shall ensure that the well is abandoned in~~

Commented [MR43]: (UPDATED and MOVED - This section has been updated to meet the industry standard BMPs for this type of facility and moved to the BMP manual. Relocating existing BMPs contained in the ordinance to the BMP manual will add clarity and consistency for the regulated public)

compliance with the Montana Department of Natural Resources and Conservation Board of Water Well Contractor Regulations, ARM §36.21.669 through §36.21.679 and §36.21.810.

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

- K. No person shall 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 comprised of 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 4 of Montana Meridian, Missoula County, Missoula, Montana.

Commented [MR45]: (Moved to Prohibitions)

- L. Existing facilities within the Future Wellhead Reservation Area defined in section 13.26.050 (K) of this ordinance may continue to operate, subject to all the conditions of section 13.26.050 and the following:
1. Any activity involving the handling of a Regulated Substance in an amount equal to or greater than its threshold quantity shall be a noncomplying activity.
 2. Any noncomplying activity that is discontinued, abandoned or ceases for a period of twelve consecutive months may not be resumed.
 3. 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.
 4. In the event a facility which houses a noncomplying activity is destroyed or damaged by any means to an extent that the cost to repair or replace the facility equals 50% of the value of the facility at the time of such act, the activity shall not be resumed or continued.

Commented [MR46]: (Moved to Regulated Substances and Pollution Management – General Requirements)

- M. In addition to any other applicable federal or state law and regulation, the following pollution prevention measures shall apply to dry cleaning facilities:
1. After October 19, 2000, wastewater generated from dry cleaning machines and vacuum presses that use perchloroethylene and other chlorinated solvents shall not be discharged to any sewer system. Dry cleaning facilities which use perchloroethylene or other chlorinated dry cleaning solvents shall either, a) treat their wastewater from dry cleaning machines and vacuum presses on site using carbon absorption/evaporation or an equivalent technology, or b) properly dispose of the wastewater as a hazardous waste;
 2. After June 19, 2000, all new or replacement dry cleaning machines using perchloroethylene or other chlorinated solvents shall be dry to dry machines and be equipped with integral refrigerated condensers or an equivalent.
 3. After June 19, 2001, no dry cleaning facility shall include operation of a transfer dry cleaning machine using perchloroethylene.

Commented [MR47]: MOVED -These basic operating conditions are now listed as the minimum BMPs for dry cleaners in the BMP manual

13.26.036 FUELING FACILITIES

- A. Any New or Replacement Underground Storage Tank system at a Fueling Facility must be approved by the ~~Department~~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 310, 2024~~22~~ to meet BMPs or receive approval for alternative BMPs. (

Commented [MR49]: NEW. Formerly only new or replacement facilities were required to provide stormwater BMPs such as a canopy or direct stormwater from fueling and tank areas away from storm drains)

- A. A Person who owns, operates or controls a Fueling Facility shall provide the following physical and procedural measures to prevent fuel Releases:
- a. Breakaway hoses and nozzles shall be installed on all dispensers;
 - b. Emergency response equipment shall be kept on site to be used in the event of a Release, including absorbent materials and spill containment covers for

each Stormwater Injection Well which may receive discharge from a surface Release; and

An employee trained on how to respond to a Release must be 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.

Commented [MR50]: (REVISED AND MOVED TO BMP MANUAL – Previously these BMPs only applied at facilities where releases could flow to a stormwater injection well. Even though allowing drainage to storm drains at fueling sites is being prohibited in Prohibitions section above, this list of minimum BMPs is still important but is now included in the BMP manual for fueling facilities)

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. A person applying a deicer on streets and highways within the City of Missoula and all places within five miles outside the city limits must comply with the requirements of this section, which are intended to ensure compliance with the drinking water or aquatic life standards for parameters listed in Table 1 below, at the point of discharge after 100:1 dilution with stormwater. Approved by the Department, and;
 2. Any deicer applied within the City of Missoula and all places within five miles outside the city limits must be 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. It is the City's preference to use a deicer that contains the least amount of any constituents which are not essential to the product's performance and which may cause contamination of soil or water, including inert or proprietary ingredients.
3. All deicer/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 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 storm water 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~~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~~Department. The limit will be based on DEQ-7 standard using a 100 to 1 dilution.

~~3. The supplier of a product delivered and/or applied that is contaminated with something not specified on the Product Checklist or contains a specified constituent at a concentration high enough to be a public health or environmental concern, may be subject to cleanup costs for anything that came in contact with the product, including but not limited to storage tanks, equipment, soils, and/or groundwater.~~

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

B. ~~DEPARTMENT~~DEPARTMENT APPROVAL PROCESS

1. Persons ~~wanting seeking~~ ~~Department~~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~~Department on forms supplied by the ~~Department~~Department. The complete application must include:
 - a. ~~A Department-supplied Product Checklist; (REMOVED. Covered by remainder of requirements)~~
 - a. Documentation of Pacific Northwest Snowfighter's Association (showing that the product is on the approved PNS) product list ~~approval~~;
 - b. ~~Independent certified laboratory~~ A analytical results of testing required in section (A) (2);
 - c. ~~The most recent~~ Material 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~~Department quality control testing purposes; and
 - f. Other relevant information that the ~~Department~~Department may require which is obtainable by the applicant.
2. ~~The Department shall have 30 days to review the submitted documentation and determine whether the product is approved. Persons requesting approval shall be notified whether their product is approved within 7 days of the Department's determination. Once a product has been approved it need not be approved again as long as the product formulation does not change. The Department shall notify the applicant within 30 days of receipt of a complete application whether the product is approved or denied.~~
3. ~~Changes to an approved product by the manufacturer or distributor which in any way makes the product different from the original qualified product will result in removal of the product from the approved list, and may result in cleanup costs, as per section (A) (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)

C. FIELD DELIVERY OF PRODUCTS

1. A bill of lading and invoice must accompany each shipment. The bill of lading and invoice must contain the following information:
 - a. Name of product;

- b. ~~Supplier and manufacturer of product;~~
 - c. ~~Destination of delivery;~~
 - d. ~~Total number of units being delivered;~~
 - e. ~~Total weight of delivery (certified scale, or certified micro flow meter);~~
 - f. ~~Lot number. The lot number must enable purchaser to track a delivered product back to its manufacturing point, date of manufacture, and specific batch;~~
 - g. ~~Name of Transport Company, tank trailer or rail car number, point and date of origin;~~
 - h. ~~Percent concentration and specific gravity for liquid products; and~~
 - i. ~~Contract unit of measure, unit price delivered (invoice only), and total price for units delivered (invoice only).~~
2. ~~All deicers can be subject to inspection and analysis as delivered. Purchaser shall have the option at the point of delivery to collect a sample of the product for quality control/quality assurance purposes. No precipitate or flocculation in liquid products shall be allowed in excess of the specification limits. Materials portraying these or other uncharacteristic traits or found to contain constituents at concentrations above the limits shown in Table 1, may be immediately rejected at the option of the buyer or their representative at the delivery location. Cost to remove an unwanted product and re-supply the purchaser shall be paid by the supplier or manufacturer of the product. The supplier or manufacturer may also be subject to cleanup costs in accordance with section (A) (3).~~
3. ~~Each shipment shall be accompanied by a current and clearly legible MSDS.~~
4. ~~Advance notice must be made for all deliveries. Deliveries shall be made during normal working hours (Monday through Friday between the hours of 8:00 A.M. and 4:00 P.M.), unless otherwise requested or agreed to by the purchaser.~~

Commented [MR57]: (This is covered by contracting)

D. STORAGE AND FIELD APPLICATION OF DEICERS

- 1. ~~deicers stored at volumes greater than 1000 gallons or 10,000 pounds (for solids) shall be secondarily contained (liquids) or covered (solids).~~
- 2. ~~Where appropriate based on deicer manufacturer recommendations and/or PNS specifications, deicers stored in tanks must be circulated to prevent settling and product stratification.~~
- 3. ~~deicers shall be applied in such a manner and at such a rate that pure product (liquid or solid) remains on the roadway.~~
- 4. ~~deicers shall be applied using trucks equipped with ground-speed controllers. deicers applied for anti-icing purposes prior to or during a storm event shall be applied at a rate not to exceed 30 gallons per lane mile. Whenever snow accumulations on the road are equal or greater than 2 inches, deicers shall only be applied after snow plowing to improve the effectiveness of a deicer and to reduce the amount applied.~~
- 5. ~~deicer may be applied over the entire roadway for main transportation routes identified in the Missoula Street Snow and Ice Control Plan. Only the area in advance of intersections shall be deiced for residential neighborhood streets and non-essential transportation routes.~~
- 6. ~~The location and amount of deicer applied shall be tallied daily. Yearly volumes of deicer applied shall be provided to the Department annually by June 1 of each year.~~
- 7. ~~Any application of a non-approved deicer or a spill of deicer in an amount greater than 100 gallons or 1,000 pounds (solid) shall be reported to the Department within 24 hours of application or release.~~
- 8. ~~By January 1, 2001, the City of Missoula shall revise their Street Snow and Ice Control Plan to address the following:~~
 - ~~(a) liquid deicer application methods (use of ground-speed controllers);~~
 - ~~(b) rates of application;~~
 - ~~(c) use of deicers with respect to the effective temperature and freezing point of the product;~~
 - ~~(d) use of snow plows prior to deicer application; and~~
 - ~~(e) keeping records on the amounts applied.~~

Commented [MR58]: (The deicer section focuses on the approval process. These BMPs for storage and field application are now within the minimum BMPs in the BMP manual. Number 8 above was removed because the language was unclear, and the intended goal of proper application is covered by the approval process and BMPs)

13.26.050 POLLUTION PREVENTION PERMIT REQUIREMENTS

~~A. 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 shall apply for a Pollution Prevention~~

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

Permit from the Department by the later of (a) July 1, 1995, or (b) 60 days after the date on which the facility first handled a Regulated Substance in an amount equal to or greater than four times its threshold quantity. New or replacement facilities 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, facility construction or 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.

B. In order to obtain a pollution prevention permit, an application for the permit accompanied by a pollution prevention plan shall be submitted to the department for approval. The department shall supply a form that can be used for the plan. If a facility is required by state or federal law 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. The pollution prevention plan shall contain the following:

1. A discussion of the risks posed by major water quality hazards at the facility and the steps taken to address each of those risks, including but not limited to:
 - a. The quantity and toxicity of any regulated substance handled in an amount equal to or greater than four times its threshold quantity;
 - b. Potential consequences of any release;
 - c. Location of facility with respect to a water body, groundwater and conduits to groundwater;
 - d. Personnel training;
 - e. Engineering controls;
 - f. Emergency response plans;
 - g. Preventative maintenance;
 - h. Process safety;
 - i. Management structure implemented to control the risks and hazards;
2. A description of:
 - a. emergency equipment available at the facility to respond to a release of a regulated substance;
 - b. written procedures describing how such equipment will be inspected and maintained, and
 - c. procedures to control, mitigate and/or remediate any release of regulated substance;
3. For each regulated substance that is handled in an amount equal to or greater than four times its threshold quantity at the facility, the pollution prevention plan shall describe:
 - a. The state (solid, liquid or gas), quantity and type of container in which each regulated substance is acquired by the facility;
 - b. Available alternatives, if any, by which the facility could:
 - i. Reduce the quantity of regulated substances handled by process changes, product substitution, reuse or recycling or treatment that does not constitute disposal, and
 - ii. Adopt handling practices or make site improvements to reduce the potential for contamination;
 - c. The manner and conditions under which each regulated substance is stored and transferred prior to use or disposition;
 - d. The manner and conditions under which each regulated substance is used at the facility;

e. ~~The manner and process by which any waste regulated substances are treated, recycled or disposed;~~

f. ~~The physical structures and/or operational procedures employed at the facility to meet the secondary containment requirements of this chapter;~~

g. ~~The procedures to be employed to ensure that regulated substances over the threshold quantity do not release or otherwise cause contamination during transportation, transfer, use, storage and disposal;~~

4. ~~Building plans and site development drawings showing compliance with the secondary containment requirements of this chapter. Such plans shall show the pathway of a potential release of a regulated substance, including but not limited to, information on the location of sewer manholes, injection wells, drainage ditches, nearby streams, rivers or irrigation ditches and the direction of surface drainage. Such plans shall provide confirmation that the secondary containment methods are compatible with the materials to be contained and that regulated substances are isolated from injection wells, floor drains, surface waters and any other surface water or groundwater injection point. The department may require the plans to be reviewed by a professional engineer if the secondary containment structures require substantial engineering design. The building or site plans must show the location of regulated substances in buildings or other designated site areas;~~

5. ~~Identification of the individual(s) or staff position responsible for monitoring releases and threatened releases and a description of the steps to be taken in the event of a release, including but not limited to, reporting the release to the department, Missoula 9-1-1 dispatch, the city fire department, rural fire department, National Response Center and any other entity required by law. The plan should identify the skill and knowledge of the person or position responsible for actions in the event of a spill;~~

C. ~~The pollution prevention permit shall be valid for a period of two years. The applicant must apply for permit renewal at least sixty days prior to permit expiration.~~

D. ~~To obtain a pollution prevention permit from the department the applicant shall pay an application fee in an amount determined by the board.~~

E. ~~The department shall issue a pollution prevention permit within thirty days of determining that the applicant has submitted a complete and accurate permit application and the pollution prevention plan complies with the requirements of this chapter. The department may require a facility inspection to ensure compliance with the requirements of this chapter before a permit is issued~~

A. A person who owns, operates, or controls a New or Replacement facility^{ies} 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 [ordinance](#)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~~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~~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 ~~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 their Department-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 Department's Best Management Practices manual 13.26.040.~~

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 ordinance 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

13.26.060 Facility closure permit.

A. ~~After the effective date of the ordinance codified in this chapter, any person that is required to have a pollution prevention permit by this chapter must obtain a facility closure permit as required by this section. Applications for a closure permit shall be filed with the department no later than thirty days after:~~

1. ~~the facility owned, operated or controlled by said person is permanently closed; or~~
1. ~~the date on which the facility has been abandoned for one year. If a person is required by state or federal law to obtain a closure permit, a copy of such permit, supplemented with such other information as may be required by this section, shall suffice to meet the facility closure permit requirement of this section. All applications shall include:~~

a. ~~A closure permit application form, supplied by the department;~~

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)

Commented [MR63]: REMOVED. No mechanisms in place to identify facility closures before they happen. Sufficient regulatory authority already exists in ordinance for site clean-up procedures)

b. ~~—A written record identifying the regulated substances and quantities at the facility on the date on which the facility permanently closed or was abandoned, and a description of the regulated substances removed from the facility before or at the time the facility permanently closed or was abandoned;~~

c. ~~—If the facility has underground sumps, injection wells, underground tanks or any other structure that may have contained or become contaminated with regulated substances, the application shall include a plan to collect samples to assess whether contaminants are present near the structure. The department shall assist the applicant in complying with this requirement;~~

a. ~~—Results of any soil or groundwater sample collected on site;~~

e. ~~—Such other information as the department may require which is relevant to the environmental condition of the facility.~~

B. ~~—If the closure permit application and required submittals are not complete, the department shall notify the applicant in writing of the deficiencies and the applicant shall have forty-five days to cure the deficiencies.~~

C. ~~—The department shall issue a closure permit within thirty days of finding that the closure permit application form is accurate and complete and all appropriate copies of sample analyses have been submitted to the department showing that the facility has complied with this section.~~

Commented [MR64]: (REMOVED. No mechanisms in place to identify facility closures before they happen. Sufficient regulatory authority already exists in ordinance for site clean-up procedures)

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 ordinance 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 ordinance code or any other state, federal or local law or regulation.

13.26.080 REPEALED

~~13.26.080 Prohibited activity. 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;~~

~~B. Violate any provision set forth in a permit for the facility issued pursuant to this chapter;~~

~~C. Violate any order issued pursuant to this chapter;~~

~~D. Violate any provision of this chapter.~~

Commented [MR65]: (MOVED to earlier in the ordinance)

13.26.090 PROTECTION OF WATER SUPPLY WELLS.

- A. New water supply wells ~~installed after the effective date of this ordinance code~~ 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 13.26.036040 (C) or (D) of this ordinance code, chemical manufacturing facility, regulated substance tank not meeting the requirements of section 13.26.036040 (G) of this ordinance 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, storm-water injection dry well, or wastewater absorption system, as defined in the Missoula City-County Health Board, Regulation No. 1.

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

~~3.~~ 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.

~~4.~~ 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).

~~5. 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 shall must provide adequate signing to indicate location of the routes to persons who transport Hazardous Waste through the valley.~~

Commented [MR66]: (NEW)

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 ~~District~~Department's Best Management Practices for Pollution Prevention Manual.

~~The Board shall, following public a public hearing, Best Management Practices and design standards interpreting this chapter and governing Regulated Substances handling and pollution prevention practices. Changes to BMPs may be approved by the Board, following public hearing.~~

~~Threshold Quantities of substances may be established or revised by the Board, following public review and comment.~~

B. After the effective date of this ordinance, no person shall construct or operate a new:

1. Hazardous waste management facility, Class II landfill, bulk petroleum storage facility, chemical manufacturing facility, fuel pipeline, fueling facility not meeting the design standards of section 13.26.040 © or (D) of this ordinance, or a regulated substance tank not meeting the requirements of section 13.26.040 (G) of this ordinance within 1000 feet of a community or non-transient non-community public water supply well.

Commented [MR68]: (MOVED to Prohibitions)

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 public water supply well.

Commented [MR69]: (MOVED to Prohibitions)

3. Publicly-owned or public sewage system sewer lift station or wastewater absorption system, as defined in the Missoula City-County Health Board Regulation No. 1 within 100 feet of a community or non-transient non-community public water supply well.

Commented [MR70]: (MOVED to Prohibitions)

4. Sewer main or storm water injection well within 50 feet of a community or non-transient non-community public water supply well.

Commented [MR71]: (MOVED to Prohibitions)

C. No person shall install a new private drinking water supply well if the primary structure located on the property is situated 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 a county or consolidated city and county water or sewer district as defined in Title 7, chapter 13, parts 22 and 23, the property abuts the right-of-way in which the main is located, and the owner of the existing public water supply system approves of the connection.

Commented [MR72]: (MOVED to Prohibitions)

D. U.S. Highway 93 and Interstate Highway 90 shall serve as the principal North-South and East-West hazardous substance transportation routes in the Missoula Valley. The City of Missoula shall provide adequate signing to indicate location of the routes to persons who transport hazardous substances through the valley. (Ord. 3177, 2001; Ord. 3154, 2000; Ord. 2906 (part), 1994).

Commented [MR73]: (MOVED to new section)

13.26.100 REPEALED VARIANCES

A. Purpose. Variances provide limited flexibility from strict compliance with specific ordinance requirements.

B. Applicability. When a person believes he or she meets the criteria for a variance set forth in subsection D below, such person may apply for a board approval of a variance following the procedure in subsection F of this section.

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.)

~~C. C. Fees. The Board shall establish a fair and reasonable variance application fee based on the cost to give notice of hearing and investigate the proposed variance. Hearing. The application fee must be paid in full before a variance will be considered. Application fees are not refundable. The Board may approve changes in fees at regularly scheduled Board meetings.~~

~~D. Criteria for Variances. The board may approve a variance to strict compliance with specific ordinance requirements only if it finds all of the following:~~

~~1. The applicant is subject to special circumstances which are:~~

- ~~a. Peculiar to the applicants Facility or situation, and~~
- ~~b. Not caused by the applicants actions or inaction; and~~

~~2. Substantial undue hardship would result from requiring strict compliance with the requirement(s) from which the variance is sought by:~~

- ~~a. Creating an unreasonable financial burden on the applicant, and~~
- ~~b. Depriving the applicant of rights commonly enjoyed by other persons similarly situated under the terms of this ordinance;~~

~~3. The variance must prevent Aquifer/aquifer and Public Water Supply System contamination and protect public health, safety and welfare to an extent similar to the requirement(s) from which the variance is sought.~~

~~E. Variance Restrictions:~~

- ~~1. The board may not approve a variance which may adversely affect the health, safety or welfare of any individual.~~
- ~~2. No variance granted shall be construed to relieve an applicant of its obligations under other provisions of this chapter, under other local, state and federal laws.~~
- ~~3. Variances are nontransferable and apply only to the applicant to whom they are granted for the period stipulated by the board.~~

~~F. Variance Approval Procedure:~~

~~1. A complete variance application shall be submitted to the Department, including:~~

- ~~a. Applicants name and address;~~
- ~~b. Specific provision(s) of the ordinance from which the variance is requested;~~
- ~~c. Legal description or address where alternative is requested;~~
- ~~d. Detailed and accurate description of the proposed alternative under consideration;~~
- ~~e. Written explanation addressing each criterion under Section 13.26.100(D)(1) through (3);~~
- ~~f. Other relevant information which the department may require which is obtainable by the applicant.~~

~~2. The Department shall have seven working days to determine if an application is complete.~~

~~3. If the Department determines that the application is not complete, it shall notify the applicant of the deficiencies. (Revised for consistency with Health Code)~~

~~4. If the Department determines that the application is complete, the Board shall schedule a public hearing within forty-five days of the departments determination. 5. The department shall serve notice of the hearing to the applicant's last known address by personal service or certified mail at least 14 days before the hearing is scheduled. The department shall publish notice of hearing in a newspaper of general circulation in Missoula County at least days before the hearing. Notice shall include:~~

- a. ~~_____ Name and address of applicant;~~
- b. ~~_____ Time, location and nature of hearing; and~~
- c. ~~_____ Address and phone number where interested persons may obtain information.~~

~~Order of Hearings.~~

~~1. Hearings shall proceed in the following order:~~

- a. ~~_____ First, the Board shall hear the staff report, if any, on the proposed variance.~~
- b. ~~_____ Second, the applicant shall may present relevant evidence to the board.~~
- c. ~~Third, the Board shall hear any person in support of or in opposition to the proposed variance and shall accept any related letters, documents or materials.~~

~~Disposition of Hearing and Continuances.~~

~~The Board shall deny, approve or approve with conditions an application for variance to specific requirements of this ordinance chapter.~~

~~The Board shall inform the applicant of its decision in writing, along with reasons for approving, conditionally approving, or denying the variance, within 15 days of its decision.~~

~~The board may continue a hearing for a period not to exceed 45 days.~~

~~A hearing may be continued for longer than 45 days only if circumstances require a longer period and both the Board and the applicant agree to a longer period.~~

~~Appeals. Any person adversely affected by a variance decision of the board may initiate judicial review.~~

13.26.110 INSPECTIONS

- A. The ~~department~~Department ~~is authorized to may~~ enter and inspect at reasonable hours (or at any time on evidence of a release), upon presentation of credentials ~~with or without prior notice~~, 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~~Department shall ~~be provided with official identification and will~~ show their identification when making an inspection.
- E. Law enforcement officers shall assist in making inspections when the ~~department~~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~~Department and the Missoula City Attorney's office shall have the power and authority to administer and enforce the provisions of this ~~ordinance code~~.
- B. Whenever the ~~Department~~Department has knowledge or evidence that a violation of this ~~ordinance code~~ has occurred, the ~~Department~~Department may issue a Notice of Violation and ~~Order to Take Corrective Action~~ to be served personally ~~or~~ by certified mail, or by email with read-receipt on the alleged violator or its agent. This Notice of Violation ~~and Order to Take Corrective Action~~ shall specify:

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

1. The provision of this ordinance code or permit alleged to be violated;
2. ~~the facts alleged to~~ The plain statement of facts that constitute the violation; and
3. ~~any Potential penalties for non-compliance penalties sought to be assessed pursuant to section 13.26.130.~~
- 3.4. What needs to be done to come into compliance.
4. _____

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~~Department~~ requires, which may include without limitation ~~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 ~~(EC)~~, or within 10 working days of receipt of the Department's decision concluding the administrative review, the offender submits a written request for a hearing before the Board, as provided for in Section (D). Upon good cause shown, the time frame for requesting a department administrative review ~~or a Board 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. ~~In no case, however, shall a request for administrative review or Board Hearing be granted if requested after the compliance date required in the Department's Order to Take Corrective Action.~~
E. (Striking unnecessary sentence and clarifying that request of a review does not allow a person to delay compliance)

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

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

F.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, but in no case later than the date of compliance required in the Department's Order to Take Corrective Action. 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, ~~if any~~, 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, ~~but in no case shall the administrative review be continued beyond the date of compliance required in the Department's Order to Take Corrective Action.~~
5. The Hearing Officer shall affirm, modify or revoke the Notice of Violation and Order to
6. ~~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)

G. Board Hearings

1. ~~Persons subject to a Department Notice of Violation and Order to Take Corrective Action may submit a written request for a hearing before the Board following conclusion of an Administrative Review, within ten days of receipt of the Hearing Officer's decision concluding the administrative review, but in case later than the date of compliance required in the Departments Order to Take Corrective Action. Upon good cause shown, the time frame for requesting a hearing may be extended if made within the time specified for compliance in the Notice of Violation ad Order to Take Corrective Action.~~
 2. ~~The Board shall schedule a hearing within 45 days of receipt of this request, but in no case later than the date of compliance required in the Departments Notice of Violation and Order to Take Corrective Action. (Revisions to 1 and 2 allow a board hearing after the date of compliance has passed)~~
 3. ~~Notice of hearing shall be given by the Department to persons requesting a hearing at the address stated on the request for hearing or at the last known address, by personal service or by mail, not less than seven days before the hearing is scheduled. Notice is complete on the date of delivery or mailing.~~
 4. ~~The Department shall publish a notice of hearing in a newspaper of general circulation in Missoula County at least four days prior to the hearing.~~
 5. ~~At the hearing, The Board shall first hear the staff report, if any, on the Notice of Violation and Order to Take Corrective Action. Second, the person who requested the hearing may present relevant information to the Board. Third, the Board may hear any person who has relevant information regarding the Notice of Violation ad Order to Take Corrective Action. The hearing may be conducted informally and need not follow rules of evidence or procedure applicable to judicial hearings. The Board may impose rules for the orderly conduct of the hearing.~~
 6. ~~The Board shall affirm, modify, or revoke the Department's Notice of Violation and Order to Take Corrective Action, in writing, following completion of its review. A copy of this decision shall be sent by certified mail or delivered personally to the person who requested the hearing. The Board shall maintain a written record of the hearing and document its final decision in the record.~~
- H. ~~If the 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 ordinance.~~
- I. ~~Instead of issuing the order provided for in subsection (B), the Department may either:~~

1. ~~Require the alleged violator to appear before the Board for a hearing at a time and place specified in the notice and answer the charges complained of; or~~

2. ~~Initiate any other action authorized by this ordinance.~~

J. ~~In connection with a Board hearing held under this Chapter, the Board may and on application by a person shall, compel the attendance of witnesses and the production of evidence on behalf of the persons.~~

K. ~~H. A person aggrieved by an order of the Board may within fourteen (14) days apply for rehearing upon only one or more of the following grounds:~~

L. ~~the Board acted without or in excess of its powers;~~

1. ~~the order was procured by fraud;~~

2. ~~the order is contrary to the evidence;~~

3. ~~the applicant has discovered new evidence, material to him/her, which he/she could not with reasonable diligence have discovered and produced at the hearing;~~

M. ~~Within thirty (30) calendar days after the decision, or in the case of rehearing within (30) calendar days of the rehearing, a party aggrieved thereby may appeal to the municipal court.~~

N. ~~The municipal court shall hear and decide the cause upon the record of the Board. The court shall determine whether or not the Board properly exercised its authority, whether or not the findings of the Board were supported by substantial competent evidence, and whether or not the Board made errors of law prejudicial to the appellant.~~

O. ~~Either the Board or the person aggrieved may appeal from the decision of the municipal court to the Supreme Court.~~

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 five hundred dollars or by imprisonment in the county jail not to exceed sixty days, or by both such fine and imprisonment. 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.

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

~~The board or the department may institute and maintain any and all enforcement proceedings.~~

E. 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.

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

~~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.~~

Commented [MR79]: (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).

F. 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.

G. 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.

13.26.140 INJUNCTIVE RELIEF. If a person continues to operate a facility or engage in an activity in violation of the provisions of this chapter, then the City board or the department ~~Department~~ may file an action for injunctive relief in the district court or in the city municipal court if the city municipal court has jurisdiction and authority to do so. (Ord. 2906 (part), 1994).

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 SEVERABILITY. IF ANY SECTION, SUBSECTION, SENTENCE, CLAUSE, PHRASE OR WORK OF THIS CHAPTER IS FOR ANY REASON HELD TO BE INVALID OR UNCONSTITUTIONAL, SUCH DECISION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THIS CHAPTER. THE COUNCIL DECLARES THAT IT WOULD HAVE PASSED THE CHAPTER AND EACH SECTION, SUBSECTION, SENTENCE, CLAUSE, PHRASE AND WORDS THEREOF, IRRESPECTIVE OF THE FACT THAT ANY ONE OR MORE SECTIONS, SUBSECTIONS, SENTENCES, CLAUSES, PHRASES OR WORDS HAVE BEEN DECLARED INVALID OR UNCONSTITUTIONAL, AND IF FOR ANY REASON THIS CHAPTER SHOULD BE DECLARED INVALID OR UNCONSTITUTIONAL, THEN THE REMAINING CHAPTER PROVISIONS WILL BE IN FULL FORCE AND EFFECT.~~

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

DRAFT