

MISSOULA VALLEY WATER QUALITY ORDINANCE
Amended December, 2008

Section 13.26.010 SHORT TITLE; APPLICABILITY; CONSTRUCTION.

This Ordinance shall be known as the "Missoula Valley Water Quality Ordinance." It is intended to protect the public health, safety and general welfare of those utilizing the Missoula Valley Aquifer and surface waters in the Missoula Valley for drinking water, recreation and other beneficial uses. 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 pursuant to §7-4-4306 MCA (1993). This Ordinance establishes prohibitions and restrictions to prevent surface water and groundwater contamination, and to protect public health, safety and welfare. This Ordinance shall be broadly construed to effect its purposes. Nothing in this Ordinance 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.

Section 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, 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 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 should also be prohibited in proximity to public drinking water wells, in order to minimize the risk of contamination.

Section 13.26.030 DEFINITIONS

For purposes of this Ordinance, the following terms have the following meanings unless the context clearly indicates otherwise:

- 1. Aboveground Storage Tank (AST) - Any one or combination of tanks that is used to contain an accumulation of Regulated Substance, and the volume of which is more than 90% above the surface of the ground.
- 2. 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.
- 3. Aquifer - A water-bearing, subsurface formation capable of yielding sufficient quantities of water for beneficial use.
- 4. 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.

5. Board - The Board of Directors of the Missoula Valley Water Quality District.
6. Bulk Petroleum Storage Facility - 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.
7. 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.
8. Chemical Manufacturing Facility - A facility having a Standard Industry Class Code (SIC Code) between 2800 and 2899 which handles Regulated Substances in an amount equal to or greater than threshold quantities.
9. 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.
10. 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.
11. Closure Permit - A permit issued by the Department in accordance with section 13.26.060 of this Ordinance when a facility is permanently closed, or has been abandoned for one year.
12. Community Water System - Any public water supply system, as defined in A.R.M. 17.38.101, which serves at least ten service connections used by year-round residents or regularly serves at least 25 year-round residents.
13. Component - Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function.
14. 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.
15. Department - The Missoula Valley Water Quality District.
16. Dry Cleaning Establishment - Any facility that uses a transfer machine, dry-to-dry vented unit, or dry-to-dry closed loop unit 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.
17. Dry-to-Dry machine: A machine that can wash and dry garments without transferring them and potentially emit chlorinated solvent to the atmosphere.
18. EPA - United States Environmental Protection Agency.

19. Facility - An area, building or buildings, appurtenant structures or surrounding land area used by a person.
20. Fleet - More than 5 vehicles or locomotives.
21. 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.
22. 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.
23. Grass Infiltration Swale - A vegetative-lined infiltration cell designed and constructed in accordance with Department standards to collect and treat contaminants in storm water runoff.
24. 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.
25. 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.
26. 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.
27. 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 are required under Montana Hazardous Waste Administrative Rules, A.R.M 17.54.105, to have a hazardous waste management permit. A Hazardous Waste Management Facility may consist of several treatment, storage, or disposal operational units.
28. Independent Certified Laboratory: A laboratory outside the control of the person requesting approval from the Department that is certified by the EPA or other appropriate certifying agency to complete testing.
29. 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.
30. Missoula Valley Aquifer - The aquifer underlying the Missoula Valley which supplies the area with water.
31. New - Constructed, installed or brought into operation after the effective date of this Ordinance.
32. 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.

33. 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.
34. 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.
35. 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.
36. Piping Manifold - The area(s) of a piping system fitted with apertures for making multiple connections.
37. 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 Department in accordance with section 13.26.050 of this Ordinance.
38. Primary Container - A container which comes into immediate contact with a Regulated Substance.
39. Public Sewage Disposal System - A system, as defined in §75-6-102(11) MCA, for collection, transportation, treatment or disposal of sewage that is designed to serve or serves ten or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.
40. Public Water Supply System - A system, as defined in §75-6-102(12) 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 10 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.
41. 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.
42. Refrigerator Condenser: A vapor recovery system into which an air-chlorinated solvent vapor stream is routed and the chlorinated solvent is condensed by cooling the gas-vapor stream.
43. 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, excluding substances used for personal household use. The Board may, following public review and comment, remove a substance from the list of Regulated Substances.
44. Release - Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a regulated substance into the environment (including the past release of a regulated substance), but excluding (a) releases contained in a secondary containment area or the indoor work place provided the release does not exit the indoor work place, (b) 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 (c) any

discharge permitted by a local, state, or federal agency.

45. Replacement - Replacement or replace shall mean:
- (a) 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.
 - (b) Replacing a component or more than 50% of a component of a facility.
 - (c) 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.
46. Secondary Containment - Containment external to and separate 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 Ordinance, 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.
47. 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.
48. 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.
49. 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.
50. Tank Fueling Area - The area surrounding the above or underground storage tanks subject to releases of petroleum products during tank fueling, including the area surrounding the tanker truck during fueling.
51. 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:
- (a) 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.
 - (b) 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.

- (c) 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:
 - (i) Waste oil - 1000 pounds or 100 gallons.
 - (ii) Gasoline - 250 pounds or 25 gallons
 - (iii) Diesel/Jet Fuel/Kerosene - 500 pounds or 50 gallons
 - (iv) New Motor Oil - 2,000 pounds or 200 gallons
- (d) For those substances that are mixtures of one or more Regulated Substance, the threshold quantity shall be based on the substance contained in the mixture with the lowest threshold quantity.

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

- 52. Transfer Dry Cleaning Machine: A machine unable to both wash and dry garments, which emits chlorinated solvent to the atmosphere during transfer.-
- 53. Underground Storage Tank (UST) - Any one or combination of tanks as defined in MCA 75-10-403.
- 54. 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).
- 55. 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.
- 56. Well - A structure, pit or hole sunk into the earth to reach a resource supply such as water.
- 57. 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.

Section 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 Ordinance, 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:
 - (a) 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

(b) 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 Engineering Department 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:

- (1) automatic pump shutoff when 50 gallons of gasoline or 250 gallons of diesel fuel have been dispensed,
- (2) emergency phone access,
- (3) 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 Ordinance. 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 Ordinance.

(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 Ordinance 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 Ordinance 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.

(I) 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) Secondly 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 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.

(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.

(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.

(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.

(N) DEICER SPECIFICATIONS

(A) GENERAL REQUIREMENTS

(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.

(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.

Table 1: Constituent Limit for Deicers

<u>Parameter</u>	<u>Limit (mg/kg)¹</u>
<u>Arsenic</u>	<u>1.0</u>
<u>Barium</u>	<u>100</u>
<u>Cadmium</u>	<u>0.20</u>
<u>Chromium</u>	<u>0.50</u>
<u>Copper</u>	<u>0.20</u>
<u>Lead</u>	<u>1.0</u>
<u>Mercury</u>	<u>0.005</u>
<u>Selenium</u>	<u>5.0</u>
<u>Zinc</u>	<u>10.0</u>
<u>Total Cyanide</u>	<u>0.20</u>
<u>Total Phosphorus</u>	<u>2,000</u>
<u>Total Nitrogen</u>	<u>1,000 / 500²</u>
<u>PH</u>	<u>6.0- 9.0</u>
<u>Pesticides/herbicides</u>	<u>Based on WQB-7 Standard³</u>

- In most cases, the limit is based on the Montana drinking water quality or acute aquatic life standard (WQB-7 standards), whichever is lower. The limit 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.
- The allowable amount of total nitrogen for a deicer is dependent on the form of nitrogen present in the deicer. Supplier must test for TKN, Nitrate + Nitrite as N, and Ammonia Nitrogen using methods approved by the Department. Organic nitrogen shall equal the amount of Total Kjeldahl Nitrogen (TKN) minus Ammonia Nitrogen. If 50% or more of the nitrogen present in the deicer is of the organic form, a limit of 1,000 mg/kg shall apply. If less than 50% of the nitrogen is of the organic form, a limit of 500 mg/kg shall apply.
- For a product that contains an agricultural by-product, the supplier shall test for any pesticide/herbicide possibly in the deicer using test methods approved by the Department. The limit will be based on MT WQB-7 standard using a 100 to 1 dilution.
- 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.

(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.

(B) DEPARTMENT APPROVAL PROCESS

(1) Persons wanting Department approval for a deicer must submit a complete application to the Department. The complete application must include:

- (a) A Department supplied Product Checklist;
- (b) Documentation showing that the product is on the approved PNS product list;
- (c) Analytical results of testing required in section (A) (2);
- (d) The most recent Material Safety Data Sheet for the product;
- (e) Proprietary chemical and physical information on the product, which shall be held confidential;
- (f) Two one liter samples of the product for quality control testing purposes; and
- (g) Other relevant information that the 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.

(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).

(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.

(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.

Section 13.26.050

POLLUTION PREVENTION PERMIT

(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 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 of this Ordinance.

(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 Ordinance.
 - (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 Ordinance. 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 60 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 30 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 Ordinance. The Department may require a facility inspection to ensure compliance with the requirements of this Ordinance before a permit is issued.

Section 13.26.060 FACILITY CLOSURE PERMIT

(A) After the effective date of this Ordinance, any person that is required to have a Pollution Prevention Permit by this Ordinance 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 30 days after (1) the facility owned, operated, or controlled by said person is permanently closed, or (2) 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:

(1) A Closure Permit Application Form, supplied by the Department.

(2) 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.

(3) 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.

(4) Results of any soil or groundwater samples collected on site.

(5) 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 45 days to cure the deficiencies.

(C) The Department shall issue a Closure Permit within 30 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.

Section 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 25 gallons.
- (2) A release of a Regulated Substance other than petroleum in a quantity which exceeds the lesser of the threshold quantity of this Ordinance or the reportable quantity under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended.

(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 or any other state, federal or local law or regulation.

Section 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 Ordinance;
- (c) violate any order issued pursuant to this Ordinance; or
- (d) violate any provision of this Ordinance.

Section 13.26.090 PROTECTION OF WATER SUPPLY WELLS

(A) New water supply wells installed after the effective date of this Ordinance 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 13.26.040 (C) or (D) of this Ordinance, chemical manufacturing facility, regulated substance tank not meeting the requirements of section 13.26.040 (G) of this Ordinance, 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 well, or wastewater absorption system, as defined in the Missoula City-County Health Board, Regulation No. 1.
 - (d) Within 50 feet of any sewer main or unlined irrigation ditch.
- (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).

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

(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.

(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.

Section 13.26.100 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 Board approval of a variance following the procedure in subsection (F).

(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. 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 of 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 applicant's facility or situation; and

- (b) not caused by the applicant's actions or inaction; and
- (2) Substantial undue hardship would result from requiring strict compliance with the requirements(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 the Ordinance.
- (3) The variance must prevent aquifer and public water supply contamination and protect public health, safety and welfare to an extent similar to the requirements(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 Ordinance, or under other local, state, and federal laws.
- (3) Variances are non-transferable 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) Applicant's 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 criteria under section 13.26.100 (D) (1)-(3).
 - (f) Other relevant information which the Department may require which is obtainable by the applicant.
- (2) The Department shall have 7 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.
- (4) If the Department determines that the application is complete, the Board shall schedule a public hearing within 45 days of the Department's 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 4 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.

(G) 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 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.

(H) Disposition of Hearing and Continuances:

- (1) The Board shall deny, approve, or approve with conditions an application for variance to specific requirements of this Ordinance.
- (2) 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.
- (3) The Board may continue a hearing for a period not to exceed 45 days.

(4) 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.

(I) Appeals: Any person adversely affected by a variance decision of the Board may initiate judicial review.

Section 13.26.110 INSPECTIONS

(A) The Department is authorized to 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 Ordinance are being followed.

(B) If a person with authority over a facility will not permit an inspection, the City Attorneys 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 Ordinance or in the interest of public health, safety, and general welfare.

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

(D) Agents of the City or Department shall 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 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.

Section 13.26.120 ENFORCEMENT

(A) The Department shall have the power and authority to administer and enforce the provisions of this Ordinance.

(B) Whenever the Department has knowledge or evidence that a violation of this Ordinance has occurred, the Department may issue a Notice of Violation and Order to Take Corrective Action to be served personally or by certified mail on the alleged violator or its agent. This Notice of Violation and Order to Take Corrective Action shall specify:

- (1) the provision of this Ordinance or permit alleged to be violated;
- (2) the facts alleged to constitute the violation; and
- (3) any penalties sought to be assessed pursuant to section 13.26.130.

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

- (1) the specific nature of corrective action that the Department requires, which may include without limitation:
 - (a) investigation, sampling and analysis to confirm a release or contamination;
 - (b) containment, removal and remedial action to abate and reduce contamination or the threat of contamination;
 - (c) the submission of a corrective action plan and corrective action progress reports or any other information deemed appropriate to protect human health and the environment;and
- (2) the time within which the corrective action is to be implemented.

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 (C), 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 departmental 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. 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.

(C) Administrative review. 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). The Hearing Officer shall schedule an administrative review hearing within ten days of receipt of the request, 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. 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. 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. The Hearing Officer shall affirm, modify or revoke the Notice of Violation and Order to Take Corrective Action, in writing, following completion of the administrative review. A copy of this decision shall be sent by certified mail or delivered personally to the person who requested the administrative review.

(D) Board Hearings. 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 Officers 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. 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. 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. 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. 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. 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.

(E) If the 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.

- (F) 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.

(G) 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.

(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:

- (1) the Board acted without or in excess of its powers;
- (2) the order was procured by fraud;
- (3) the order is contrary to the evidence;
- (4) 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;
- (5) competent evidence was excluded to the prejudice of the applicant.

(I) 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.

(J) 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.

(K) Either the Board or the person aggrieved may appeal from the decision of the municipal court to the Supreme Court.

Section 13.26.130 CRIMINAL PENALTIES

(A) Any person who violates any of the provisions of this Ordinance, or any order made pursuant to this Ordinance, shall be guilty of a misdemeanor and subject, upon conviction thereof, to a fine not to exceed five hundred dollars (\$500) 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) Action under this section shall not be a bar to enforcement of this Ordinance or orders made pursuant thereto, by injunction or other appropriate remedy. The Board or the Department may institute and maintain any and all enforcement proceedings.

(C) All fines collected shall be deposited in the City General Fund.

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

(E) The City of Missoula may not enter into a vendor or construction contract, grant, or loan with any person who has been convicted of an offense under this Ordinance. This prohibition shall:

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

(2) affect each facility owned or operated by the person.

(F) 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 this provisions of this Ordinance.

Section 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 Ordinance, then the Board or the 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.

Section 13.26.150 SEVERABILITY

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed the Ordinance 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 Ordinance should be declared invalid or unconstitutional, then the remaining Ordinance provisions will be in full force and effect.

Codification Instructions - This Ordinance shall be codified as Chapter 13.26 Missoula Municipal Code, Sections 13.26.010 through 13.26.150.