

Chapter 26 WATER AND WASTEWATER UTILITIES¹

ARTICLE 26-100. IN GENERAL

Sec. 26-101. Regulations.

The city administrator shall promulgate and publish rules and regulations for administration and operation of the municipal water and wastewater utilities. Those rules and regulations shall, as a minimum, include the rules and regulations required under Montana Code Annotated, Section 69-7-201.

(Ord. No. 85-4618, § 1(18.04.010), 1-14-85)

Sec. 26-102. Failure to comply with rules and regulations.

Any person who shall fail to comply with the rules and regulations after notice of nature of violation/delinquency and reasonable time to comply shall be subject to termination of service. Provided, that the service may not be terminated for failure to pay until forty (40) days after billing date and a notice has been mailed to the customer. Provided, further, that in emergency situations, as determined in the sole discretion of the city, service may be terminated without notice. Said service shall not be restored until the violation/delinquency is corrected and full compliance is assured. In addition, persons failing to obey promulgated rules and regulations shall be subject to punishment and penalties as provided for violations of other provisions of this code. Violators of Chapter 24 of the rules and regulations shall be subject to penalties and notices as specified therein.

(Ord. No. 85-4618, § 1(18.04.020), 1-14-85; Ord. No. 92-4906, § 1, 7-27-92)

Sec. 26-103. Review of administration's action.

Any person aggrieved by an administrative decision, any rule or regulation adopted or the application of any rule or regulation governing the operation of the municipal water and wastewater utilities may petition the city council for review. Said aggrieved person shall file a written notice of appeal with the city administrator within ten (10) days after the date on which the grievance occurred. The notice of appeal shall state the specific action being appealed, the reasons for appealing such action, the particular relief sought, the aggrieved person's correct mailing address, and shall be signed by the aggrieved person. The petitioner shall be notified in writing by certified mail, return receipt requested, of the date and time the matter will be considered on the agenda. The petitioner and all

¹Editor's note(s)—Ord. No. 85-4618, adopted Jan. 14, 1985, did not specifically amend the Code hence codification of said ordinance herein as Ch. 26, Arts. 26-100—26-400, was at the discretion of the editor. Prior to the enactment of Ord. No. 85-4618, former § 26-101 saved from repeal Title 18, §§ 10.60.030, 10.60.040, 10.80.010—10.80.090, of the "Billings Municipal Code, 1967" pertaining to water and wastewater utilities.

Cross reference(s)—Administration, Ch. 2; public works board, § 2-536 et seq.; building and building regulations, Ch. 6; plumbing code, § 6-501 et seq.; health and sanitation, Ch. 15; planning, Ch. 20; solid waste, Ch. 21; streets, sidewalks and other public places, Ch. 22; subdivision regulations, Ch. 23.

State law reference(s)—Utility services, MCA 7-13-101 et seq.; municipal utilities, MCA 69-7-101 et seq.

other interested persons may appear at the time and place and be heard. The city council shall act on the question within thirty (30) days of the hearing on the question.

(Ord. No. 85-4618, § 1(18.04.030), 1-14-85; Ord. No. 85-4664, 9-9-85)

Sec. 26-104. Definitions.

Unless the context specifically indicates otherwise, the meanings of terms used in this article on municipal water and wastewater utilities and in the rules and regulations authorized herein shall be as follows:

Backflow Preventer means a device or means to prevent backflow into the potable water system. *Building sewer* means the privately-owned extension of the building drain to the public sanitary sewer or other place of disposal.

Combined sewer means a sewer receiving both surface runoff and wastewater.

County or Yellowstone County means the County of Yellowstone in the State of Montana.

Extension means the act or process of extending, adding to or enlarging the municipal water supply system ~~and/or~~ wastewater system on the city's side of the point of delivery/point of connection to provide municipal water/wastewater service to a prospective customer/user or group of prospective customers/users.

Fireline means all service pipes, curb stops and/or valves, curb boxes and/or valve boxes, backflow prevention devices, check valves, inside piping, fittings, fixtures, and any other apparatus on customer's side of the point of delivery used for, and limited to, the providing of water to customers for fire suppression activities.

Garbage means solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

Natural outlet means any outlet into a watercourse, pond, ditch, lake or other body or surface or ground water.

Point of connection means the point at which the city's municipal wastewater system connects physically to a user's building sewer. Unless otherwise designated in the user's service agreement, the point of connection shall be located at and include the user's service tee or wye fitting which is normally attached to the public sanitary sewer located in a public right-of-way and/or easement that abuts and fronts the property to be served.

Point of delivery means the point at which the municipal water supply system connects physically to a customer's water service line. Unless otherwise designated in the customer's service agreement, the point of delivery shall be located at and shall include the customer's corporation stop which is normally attached to the public water main located in the public right-of-way and/or easement that abuts and fronts the property to be served.

Public sanitary sewer means the sewer directly controlled by the city and laid in the street or other right-of-way for the collection of wastewater from user's building sewers.

Public water main means the pipe directly controlled by the city and laid in the street or other right-of-way for the distribution of water to customers' water service lines.

Rules and regulations mean all rules and regulations promulgated by the city administrator for administration and operation of the utility as provided for in Section 26-101, BMCC *Sanitary sewer* means a sewer that carries wastewater or sewage.

Sanitary sewer service line or *wastewater service line* means that portion of the privately-owned building sewer extending from the property line of the property served to the public sanitary sewer.

Sewer means a pipe or conduit for carrying wastewater or drainage.

Shall is mandatory; *may* is permissive.

Storm sewer or storm drain means a sewer that carries storm and surface waters and drainage but excludes wastewater and polluted industrial wastes. *Suspended solids* means solids that either float on the surface or are in suspension in water, wastewater or other liquids, and which are removable by laboratory filtering.

User or Customer means any person receiving municipal water/wastewater service directly from the municipal water supply system/municipal wastewater system.

Wastewater or Sewage means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with any groundwater, surface water and storm water that may be present, whether treated or untreated, which is discharged into or permitted to enter the municipal wastewater system.

Wastewater service or Municipal wastewater service means the act of directly discharging wastewater into the municipal wastewater system from users' building sewers for the purpose of collecting, transporting, treating and disposing of said users' wastewater.

Wastewater service area means the particular territory which has been officially adopted by the city council as the area it intends to provide with wastewater service.

Wastewater system or Municipal wastewater system means any wastewater facilities, including intercepting sewers, outfall sewers, wastewater collection systems and wastewater treatment facilities controlled by the city.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

Water service or Municipal water service means the supplying of water directly from the municipal water supply system, or the availability of water supplied directly from the municipal water supply system, at the point of delivery and also the water so delivered or used.

Water service area means the particular territory which has been officially adopted by the city council as the area it intends to serve with municipal water service.

Water service line means all privately-owned facilities, including service pipe, corporation stop, approved curb stop, curb box, municipal water meter box or vault, backflow prevention device, pressure reducing valve, expansion tank, inside piping, appliances, and other apparatus on customer's side of the point of delivery, except the municipal water meter and any other equipment owned by the city.

Water supply system or Municipal water supply system means any devices, facilities, structures, equipment, land or works controlled by the city for the purpose of the processing, treatment, transmission, storage, distribution, pumping and measurement of water supplied to customers.

(Ord. No. 85-4618, § 1(18.04.040), 1-14-85; Ord. No. 06-5356, § 2, 1-9-06)

Sec. 26-105. Jurisdiction.

The jurisdictional area of this Code and regulations and rules shall govern any territory, whether within or without the corporate city limits, which is presently or in the future to be served with water or wastewater service or both.

(Ord. No. 85-4618, § 1(18.04.050), 1-14-85)

Sec. 26-106. Special agreements for unusual wastewater treatment.

The city and any industrial concern may by written agreement not inconsistent with this article provide that an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor by the industrial concern.

(Ord. No. 85-4618, § 1(18.04.060), 1-14-85)

Sec. 26-107. Rates and charges.

All water and wastewater rates, charges and classifications shall be established and changed under the procedure prescribed and outlined in Montana Code Annotated Title 69, Chapter 7, Part 1. The council's decision pursuant to Montana Code Annotated Section 69-7-112 shall be in writing and in the form of a city resolution.. All other fees and charges imposed by the city within the utilities service areas shall be set by the city council by resolution.

(Ord. No. 85-4618, § 1(18.04.070), 1-14-85)

Sec. 26-108. Combined charges and water and wastewater service.

All bills issued for municipal water service, wastewater service, solid waste service, or any other City services shall state the amounts for each service separately. A bill may contain any combination of services, depending on the availability of services for the property being billed. Partial payments are allowed, but the payment is prorated against all outstanding charges.

(Ord. No. 85-4618, § 1(18.04.080), 1-14-85)

Sec. 26-109. Meters for nonusers of city water system.

Meters or other means of gauging or metering water used on premises not using the city water service but connected to the city wastewater system for wastewater service shall be installed at the expense of the owners of such premises in accordance with city rules and regulations. Said meters shall be accessible to the city and its employees to facilitate the determination of the wastewater charges to be paid by the owners or occupants of such premises.

(Ord. No. 85-4618, § 1(18.04.090), 1-14-85; Ord. No. 06-5356, § 3, 1-9-06)

Sec. 26-110. Statement for wastewater service only.

Statements issued for city wastewater service to parties and properties connected to the wastewater system for wastewater service but which do not receive city water service shall be made on the same forms and at the same times as nearly as may be and with the same billing charges as the combined water and wastewater statements.

(Ord. No. 85-4618, § 1(18.04.100), 1-14-85)

Sec. 26-111. Adjustment of wastewater charges.

- (a) The wastewater rates, charges and rental may be adjusted, as applied to particular premises, by the procedure set forth below, where it appears that:
- (1) The character of the wastewater from any manufacturing, industrial or other plant, building or premises is such that the wastewater rates provided are unfair, inequitable, unreasonable or inadequate to pay the cost of wastewater service to such premises;
 - (2) The entire amount of water delivered through the metered line to any premises is used for such a purpose and in such a manner as to establish beyond reasonable doubt that such water does not enter the wastewater system; or
 - (3) The entire amount of water delivered through a secondary meter on any premises is used for such a purpose and in such a manner as to establish beyond reasonable doubt that water so delivered does not enter the wastewater systems. Secondary meters shall be of a type, size and make and set at such place as shall be designated by the city rules and regulations.
- (b) Any person who considers the wastewater rates, charges and rental applicable to his premises unfair, inequitable or unreasonable may present his complaints to the public works board, stating the facts and grounds of complaint. The board shall advise the city administrator or his designee of any need for investigation and a report of the investigation shall be made to the board. The public works board shall consider each and all of such complaints and reports and communicate its recommendations to the city administrator. Where the entire amount of water or any metered portion thereof delivered to any premises does not enter the wastewater systems, this fact shall be part of the report. When the board finds that the wastewater rates, charges and rentals applicable to any premises are for other reasons unfair, inequitable, unreasonable or inadequate, it shall communicate its findings to the city administrator. The city administrator shall report the same to the city council and the council shall have the right to order a public hearing as to any such matter and, if convinced that an adjustment of the wastewater rates, charges and rentals for such premises is necessary to provide equality with those charged to others, it shall so provide, either by amendatory ordinance, or by resolutions fixing special wastewater rates and charges for individual premises during the period of continuance of special circumstances which make the standard rates and changes unfair, inequitable, unreasonable or inadequate.

(Ord. No. 85-4618, § 1(18.04.110), 1-14-85; Ord. No. 10-5504, § 5, 2-22-10)

Sec. 26-112. Owner's duty to use utility services.

The owner of any house, building or other property used for human occupancy, employment or recreation, which is situated within the city and abuts on any street, alley or right-of-way in which there is situated water or wastewater utilities within one hundred (100) feet of the property line, shall at his own expense properly connect and use said services.

(Ord. No. 85-4618, § 1(18.04.120), 1-14-85)

Sec. 26-113. When private systems may be used.

When municipal water or wastewater utilities are not available as provided in this Code, private systems may be used so long as water or wastewater utilities are not available, provided, that all private systems shall be constructed, installed and maintained under and pursuant to the rules and regulations of the city-county health department.

(Ord. No. 85-4618, § 1(18.04.130), 1-14-85)

Sec. 26-114. Inspection of water and wastewater systems and facilities.

The city administrator and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing, in accordance with the provisions of the code on municipal water and wastewater utilities [this chapter.]

(Ord. No. 85-4618, § 1(18.04.140), 1-14-85)

Sec. 26-115. Permit required for connection, extension or use.

No person shall uncover, make any connections with or opening into, extend, use, alter or disturb the water supply system and/or wastewater system without first obtaining a written permit from the city and providing the insurance and bond required by section 6-512.

(Ord. No. 85-4618, § 1(18.04.150), 1-14-85; Ord. No. 03-5251, § 1, 8-11-03)

Sec. 26-116. Unpolluted drainage; storm sewers.

- (a) Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the city. Industrial cooling water or unpolluted process waters may be discharged, upon approval of the city to a storm sewer, combined sewer or natural outlet.
- (b) No storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters shall be discharged into any public sanitary sewer.

(Ord. No. 85-4618, § 1(18.04.160), 1-14-85)

Sec. 26-117. Prohibited acts.

It is prohibited for any person to do any of the following:

- (1) Place, deposit, put, cause or permit to be put the carcass of any dead animal, or any offal or excrement from any human being, garbage or any foul or polluting matter upon public or private property within the city or area under the jurisdiction of the city or into any stream, pond spring or reservoir within the corporate limits of the city, or within five (5) miles thereof, from which stream, pond, spring or reservoir the city derives or obtains any portion of its water supply.
- (2) Discharge into any natural outlet or open ditch within the city or in any area under the jurisdiction of the city, any wastewater, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with the provisions of this article.
- (3) Construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater, except that a septic tank may be used when it qualified as a private system.
- (4) Bathe, swim or wade in any reservoir or intake to the city water supply within the corporate limits of the city, or within five (5) miles thereof, from which reservoir the city derives or obtains any portion of its water supply. The city intake being that place on the Yellowstone River where water is diverted from

the stream of such river into the water supply system, and within a distance of five hundred (500) feet upstream from such intake, on the same side of the river from which water enters the intake.

- (5) Extend, permit, or cause to be extended, beyond the service area boundaries of the city any public or private water and/or wastewater systems which are either directly or indirectly connected with the water supply system or wastewater system of the city.
- (6) Maliciously, willfully or negligently break, damage, destroy or deface any structure, equipment or other appurtenance of the water supply system and/or wastewater system.
- (7) Without authorization uncover, tamper with or attempt to repair any such equipment.
- (8) Connect roof spouts, foundation drains, areaway drains, cooling water drains or other sources of surface run off, ground water or unpolluted water to a building sewer or building drain which is connected directly or indirectly to the wastewater systems.
- (9) Install sanitary sewer service lines and appurtenances, make connections to the wastewater systems, make repairs, alterations or extensions thereto.
- (10) Allow any ground water, surface water, mud, gravel, sand, rock, septage or any similar material or any foreign material to enter the wastewater system.
- (11) Make or maintain connection with any pipes or private services connected with the city water supply system so as to obtain water from any source other than the water supply of the city.

(Ord. No. 85-4618, § 1(18.04.170), 1-14-85)

Sec. 26-118. Damage to public water supply system and wastewater system.

Any person constructing extensions or installing water service lines, firelines or sanitary sewer service lines shall cause to be immediately repaired at his or its expense any damage to the water supply system, and/or wastewater system.

(Ord. No. 85-4618, § 1(18.04.180), 1-14-85)

Sec. 26-119. Violator liability for damages.

Any person violating any of the provisions of this chapter is liable to the city for any expense, loss or damage occasioned to the city by reason of such violation. Violators of Article 26-600 shall be subject to penalties and notices as specified therein.

(Ord. No. 85-4618, § 1(18.04.190), 1-14-85; Ord. No. 92-4906, § 2, 7-27-92)

Sec. 26-120. Notice to violators.

Any person found to be violating the provisions of this chapter shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for its satisfactory correction. The offender shall, within the period of time stated in such notice, permanently cease all violations. Violators of Article 26-600 shall be subject to penalties and notices as specified therein.

(Ord. No. 85-4618, § 1(18.04.200), 1-14-85; Ord. No. 92-4906, § 2, 7-27-92)

ARTICLE 26-200. WATER AND WASTEWATER SERVICE AREA

Sec. 26-201. Intent and purpose.

The intent and purpose of this article is to:

- (1) Adopt an official water service area which specifically designates that particular territory which is to be served with water service from the water supply system;
- (2) Adopt an official wastewater service area which specifically designates that particular territory which is to be served with wastewater service from the wastewater system.
- (3) Provide for an orderly, planned, and cost effective method of enlarging the service area so adopted;
- (4) Promote annexation to the corporate city limits of all properties to be served from the water supply system and by the wastewater system.
- (5) Ensure public participation and comment in the decision making process with respect to all enlargements of the service areas.

(Ord. No. 85-4618, § 1(18.05.010), 1-14-85)

Sec. 26-202. Adoption of service area.

The official water or wastewater service area for the city is that area of the city within the boundaries of the city, any areas presently served outside the city and any subsequently approved amendments thereto. A map depicting the water service area adopted herein, and any enlargements that may be from time to time approved by the city council, shall be made available at all times for public inspection during regular working hours at the Utility Service Center, 2251 Belknap Avenue, Billings, Montana. A map depicting the wastewater service area shall be developed and maintained in the same manner.

(Ord. No. 85-4618, § 1(18.05.020), 1-14-85; Ord. No. 06-5356, § 4, 1-9-06)

Sec. 26-203. Prerequisite to application.

Unless this section is waived by the mayor and city council as provided in section 26-207, the following conditions shall be met prior to making application for enlargement of the service area:

- (1) The property at the time the application is filed shall be:
 - a. Contiguous to the boundary of the service area as same exists;
 - b. Entirely within areas allowed for annexation as described in the city annexation policy;
 - c. Entirely within the city's facilities planning area.
- (2) Applicant shall complete annexation requirements.
- (3) Provided, that should a state or federal governmental entity, as a condition of providing funds or grants, require that service be extended to other areas outside the scope of this section (section 26-203), the city council may, upon receipt of application for waiver and upon a proper showing, waive the requirements of this section.

(Ord. No. 85-4618, § 1(18.05.030), 1-14-85; Ord. No. 11-5535, § 2, 6-13-11; Ord. No. 16-5673, § 1, 6-27-16)

Sec. 26-204. Annexation requirements.

- (a) Unless this section is waived by the mayor and city council as provided in section 26-207, all properties to be included within the service area shall be annexed or an attempt at annexation shall be made first and before any service area enlargement applications may be considered. Further, that whenever possible the property being considered for inclusion in the service areas shall be annexed to the city rather than accepting waivers of the property owner's right to protest annexation of said property to the city. Waivers may be accepted by the city in its sole discretion only in those particular cases where good and sufficient cause is shown and a hardship would result if waivers were not accepted.
- (b) A prospective applicant shall first petition the city to annex the property involved prior to submission of a service area enlargement application. The city council shall then consider such petition. Any waivers must be in legal form as approved by the city attorney; be recorded with the County Clerk and Recorder, Yellowstone County, Montana; run with the land; and shall be signed by owners of the majority of the land area and by a majority of the land owners of the area to be considered for inclusion in the water service area.
- (c) The city administrator shall notify in writing the prospective applicant of denial of annexation or right to file waivers or both, and approval or denial of enlargement of the service area. If approved the applicant shall be notified as to when the requirements set forth in this section have been satisfactorily completed and authorize said applicant to proceed with the service area enlargement application.

(Ord. No. 85-4618, § 1(18.05.040), 1-14-85; Ord. No. 16-5763, § 2, 6-27-16)

Sec. 26-205. Enlargement application.

Applications and required documentation for water and/or wastewater service area enlargements shall be submitted in writing using forms provided by the city.

(Ord. No. 85-4618, § 1(18.05.050), 1-14-85; Ord. No. 16-5763, § 3, 6-27-16)

Sec. 26-206. Public hearing.

At the time of completion of annexation, the annexed territory shall automatically be included in the service area; however, before officially acting upon any application for enlargement of the service area into an unannexed area the city council shall hold a public hearing thereon and shall give public notice of hearing upon each such application.

(Ord. No. 85-4618, § 1(18.05.060), 1-14-85; Ord. No. 16-5763, § 4, 6-27-16)

Sec. 26-207. City council action.

After the conclusion of a public hearing as provided in section 26-206, by a simple majority vote of those members present and voting, the mayor and city council may waive the requirements of sections 26-203 and 26-204 if in their discretion there exists unique or exceptional factual circumstances that convince them that such requirements within these two (2) sections are unnecessary or impractical.

If the requirements of 26-203 and 26-204 are not waived, the city council shall approve, conditionally approve or deny an application for enlargement of a service area that has met the requirements of section 26-203 and 26-204 within thirty (30) days after the date of the public hearing. The approval or conditional approval shall be in force for the period of time set forth in the approval. A denial of an application shall be in force for one (1) year after date of such denial.

In all circumstances where an enlargement of a service area has been approved or conditionally approved but annexation has been denied, prior to the provision of services by the city the applicant shall enter into a service agreement with the city and shall submit a written waiver of right to protest annexation.

(Ord. No. 85-4618, § 1(18.06.070), 1-14-85; Ord. No. 16-5763, § 5, 6-27-16)

ARTICLE 26-300. WATER SERVICE LINES, SANITARY SEWER SERVICE LINES AND FIRELINES

Sec. 26-301. Installation of lines.

Separate and independent water and sanitary sewer service lines shall be provided for each separate building. Water service lines, firelines or combinations thereof shall be connected to the public water main and sanitary sewer service lines shall be connected to the public sanitary sewer situated within the public right-of-way abutting and fronting the property to be served and within the limits of the property's frontage on the right-of-way involved. In addition, whenever possible, the service lines shall be installed perpendicularly to the public right-of-way containing the public water main and public sanitary sewers to which connection is to be made. In each case, the site, arrangement, types of materials used, and method of construction of service lines shall all be approved by the city administrator prior to construction of such facilities. If a parcel of land does not front on a public water main or a public sanitary sewer, then prior to obtaining an installation permit the property owner shall, at his expense, extend the water supply system or wastewater system the required distance in accordance with the regulations governing such extensions.

(Ord. No. 85-4618, § 1(18.06.010), 1-14-85)

Sec. 26-302. Multiple building service agreements.

In the event it is determined that it is impractical to construct independent separate service lines to serve each building of a group of buildings, such as mobile home courts, planned unit developments and large commercial or industrial establishments, which are situated on a single parcel of land under ownership of a single entity, then in that event the city administrator may allow more than one separate building to be served by a single service line. However, approval shall not be given in such circumstances until the property owner:

- (1) Provides a copy of appropriate title memorandum and properly executes the city's standard multiple building service covenant, records the same with the county clerk and recorder, and subsequently provides the city with a copy of the recorded document; and
- (2) Pays the appropriate special agreement fee.

(Ord. No. 85-4618, § 1(18.06.020), 1-14-85)

Sec. 26-303. Protective Devices.

Protective devices are required in order to protect the municipal water supply system from the potential of a customer to contaminate the city's drinking water due to back pressure and back siphonage. A property owner may be required to install, as a condition of continued water service and at the property owner's expense, an approved expansion tank, pressure reducing valve, backflow prevention device, pressure relief valve, or any other similar type of device on the property owner's water service line at a location designated by the city and in

accordance with applicable uniform codes. Property owners are responsible for keeping these devices in good repair and effective operating condition at all times. Failure to keep these devices in good working condition may be cause to discontinue water service to the property involved.

Backflow prevention devices as required under applicable fire, building, plumbing codes, and/or the City's Cross Connection Control Manual must be installed, maintained, repaired, and replaced in accordance with the applicable uniform codes. Testing of backflow prevention devices must be performed at the time of installation and at least annually thereafter by a certified backflow prevention assembly tester.

ARTICLE 26-400. TRUCKED AND HAULED WASTE DISPOSAL

Sec. 26-401. Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

Manifest means a written document issued by the city that specifies, among other things, the source and nature of wastes and, when properly executed by the city and all parties, authorizes the discharge of septage and trucked wastes into the city's approved waste disposal station.

Permit means a written receiving ticket issued by the city permitting the discharge of septage or trucked waste into the city's approved waste disposal station in accordance with the provisions of this article.

Person means any institution, public or private corporation, company, partnership, association, society or other entity as well as a natural person.

Septage means the mixed liquid and solid contents pumped from septic tanks used for receiving primarily segregated domestic wastes or wastes from sanitary conveniences.

Septage hauler means a person having a valid city business license, when appropriate, and in addition, licensed by state and local governmental agencies in accordance with the provisions of Montana Code Annotated, Sections 37-41-101 through 37-41-212 wherein it is required that persons be licensed to operate a business for the purpose of cleaning septic tanks and transporting septage to an approved septage disposal facility.

Trucked waste means wastes, other than septage, transported to the approved waste disposal station by a septage hauler and approved by the city for disposal.

Waste disposal station means the city's approved waste disposal station which is available for the purpose of disposing of septage.

(Ord. No. 85-4618, § 1(18.30.010), 1-14-85; Ord. No. 5022, § 1, 5-27-97)

Sec. 26-402. Prohibited discharge.

It is prohibited to discharge septage or trucked waste either directly or indirectly into any wastewater system/storm sewer or appurtenance thereof.

(Ord. No. 85-4618, § 1(18.30.020), 1-14-85; Ord. No. 97-5022, § 2, 5-27-97)

Sec. 26-403. Permit and manifest required.

- (a) It is unlawful for any person to discharge septage or trucked waste into the waste disposal station without first obtaining and properly executing and delivering the manifest to the septage hauler at the time of waste pickup.
- (b) It is unlawful for any person to contract with a septage hauler for the purpose of hauling septage from a non-domestic source or any trucked waste without obtaining a manifest from the city and properly executing and delivering the manifest to the septage hauler at the time of waste pickup.

Sec. 26-404. Application and permit fee.

- (a) Licensed septage haulers shall make application for septage or trucked waste disposal permits and manifests on a special form furnished by the city. Permits or manifests will be issued upon compliance with the provisions of this article and any regulations adopted hereunder. The septage disposal permit fee shall be the fee set by city resolution.
- (b) The city may refuse to grant or may revoke a permit for the disposal of septage or trucked waste into the waste disposal station to any applicant who has willfully and repeatedly violated the provisions of this article. Only septage pumped from septic tanks situated within Yellowstone County and which receive primarily segregated domestic wastes or wastes from sanitary conveniences shall be allowed to be discharged into the waste disposal station. Only approved trucked waste shall be allowed to be discharged into the waste disposal station.

(Ord. No. 85-4618, § 1(18.30.040), 1-14-85; Ord. No. 97-5022, § 4, 5-27-97; Ord. No. 06-5356, § 5, 1-9-06)

Sec. 26-405. Rules and regulations.

The city administrator shall promulgate and publish rules and regulations governing and controlling septage or trucked waste disposal within the city. Said rules and regulations at a minimum shall include:

- (1) Form and procedure for execution and processing receiving tickets;
- (2) Supervision of discharge; and
- (3) Sampling and testing of septage or trucked waste.

(Ord. No. 85-4618, § 1(18.30.050), 1-14-85; Ord. No. 97-5022, § 5, 5-27-97)

Sec. 26-406. Inadmissible wastes.

Unless prior written authorization is provided by the city, it is unlawful to discharge or cause to be discharged into the waste disposal station any industrial wastes, radioactive wastes, corrosive wastes, explosive mixtures, unpolluted waters, petroleum oils, mineral oils, nonbiodegradable cutting oils, chemical wastes, toxic or poisonous substances, floatable fats, wax and grease, solid or viscous wastes such as but not limited to mud, sand or gravel, or any other wastes or substances prohibited from being discharged into the wastewater system by existing city ordinances, or as same may be lawfully amended from time to time by the city council.

(Ord. No. 85-4618, § 1(18.30.060), 1-14-85; Ord. No. 97-5022, § 36, 5-27-97)

**ARTICLE 26-500. REIMBURSEMENT AND COMPENSATION OF WATER
AND WASTEWATER EXTENSION AND REPLACEMENT COSTS²**

Sec. 26-501. Purpose.

The intent and purpose of this article is to provide equitable procedures for the reimbursement and compensation of a portion or all of the costs of constructing certain water and wastewater facilities to private parties who paid for the initial installation of those facilities. No person shall acquire any vested rights under the terms and provisions of this article.

(Ord. No. 85-4641, § 1, 5-6-85; Ord. No. 06-5356, § 7, 1-9-06; Ord. No. 11-527, § 1, 1-10-11)

Sec. 26-502. Definitions.

For the purposes of this article, the following words and phrases used herein are defined as follows:

Compensation agreement means a written document between the city and a developer outlining the conditions under which the developer may receive compensation from the city for general benefit water and wastewater facilities constructed by and initially paid for by the developer.

Customer means any person receiving water and/or wastewater service either directly or indirectly from the city water and/or wastewater system.

Developer means a person who requests use of the city water and/or wastewater general benefit facilities to provide water and/or wastewater service to special benefit facilities.

Extension/construction means the act or process of extending or constructing water/wastewater special or general benefit facilities for the purpose of providing service to properties situated within the city's approved service areas.

General benefit facilities means water and wastewater system facilities that benefit all or a large number of customers, and/or that provide service to large areas. Typical general benefit facilities include, but are not limited to water lines larger than twelve (12) inches in diameter or as determined by the city engineer as determined to serve that area using standard engineering practices for commercial and/or industrial and residential service areas, water booster pumping stations serving areas larger than the customer's property, wastewater lines larger than twelve (12) inches in diameter or as determined by the city engineer as determined to serve that area using standard engineering practices for commercial and/or industrial and residential service areas, and wastewater pumping stations serving areas larger than the customer's property.

Limits of annexation map means the exhibit included with the annexation policy as adopted by the city and as may, from time to time, be revised.

²Editor's note(s)—Ord. No. 06-5356, § 6, adopted January 9, 2006, changed the title of article 23-500 from "Reimbursement of water and wastewater extension costs" to "Reimbursement and compensation of water and wastewater extension and replacement costs."

Off-site special/general benefit facilities means facilities which are located between the existing water or wastewater system and the nearest boundary of the property for which service is to be provided.

Perimeter special benefit facilities means special benefit facilities which are located immediately adjacent to the exterior boundaries of the property for which service is to be provided.

Reimbursement agreement means a written document between the city and a developer outlining the conditions under which a developer may receive reimbursement from other property owners for a portion of water and wastewater facilities constructed by and initially paid for by the developer.

Special benefit facilities means water or wastewater facilities which are owned and controlled by the city and which provide service solely to specific properties located within the city's water or wastewater service areas. Typical special benefit facilities include, but are not limited to water lines twelve (12) inches in diameter or as determined by the city engineer as determined to serve that area using standard engineering practices for commercial and/or industrial and residential service areas, water booster pumping stations serving small areas, wastewater lines twelve (12) inches in diameter or as determined by the city engineer as determined to serve that area using standard engineering practices for commercial and/or industrial and residential service areas, and wastewater pumping stations serving the specific customer's property. (Ord. No. 85-4641, § 1, 5-6-85; Ord. No. 06-5356, § 8, 1-9-06; Ord. No. 11-5527, § 2, 1-10-11; Ord. No. 15-5650, § 1, 3-9-15)

Sec. 26-503. Requirement for payment of reimbursement fee.

Any prospective customer owning property located outside a developer's subdivision and desiring to connect to any facility to which they did not financially contribute and which has been extended at the city or the developer's expense, shall pay a reimbursement fee to the city if said facility was constructed within the last 30 years. This fee shall be determined by the city and shall be based upon the prospective customer's fair share portion of the costs of the facility involved. This fee shall be in addition to and not in lieu of any fees which may be imposed by the city for refunding of general benefit facilities. This fee applies only to properties located immediately adjacent to any such facilities and from which the properties receive direct service and/or for which a benefit can be directly determined. Benefit for reimbursement may include multiple adjacencies (multiple lot frontages) as determined by the city.

(Ord. No. 85-4641, § 1, 5-6-85; Ord. No. 06-5356, § 9, 1-9-06; Ord. No. 11-5527, § 3, 1-10-11)

Sec. 26-504. Compensation by city.

Developers are responsible for the cost of the special benefit facilities that front the development and are necessary to bring service to the development. The city reserves the right to direct a developer requesting an extension to the municipal water supply system and/or to the municipal wastewater system to install oversized general benefit water system and/or wastewater facilities larger than that required to serve the area included in the customer's subdivision or property. Any compensation by the city to the customer requires an approved compensation agreement. The developer shall also meet the requirements contained herein and shall also meet the requirements set forth in the most recent copy of the City's Rules and Regulations Governing Water and Wastewater Service. It is the customer's responsibility to inquire about, obtain and comply with the most recent copy of the City's Rules and Regulations Governing Water and Wastewater Service.

(Ord. No. 06-5356, § 12, 1-9-06; Ord. No. 11-5527, § 4, 1-10-11; Ord. No. 15-5650, § 2, 3-9-15)

Editor's note(s)—See note at § 26-505.

Sec. 26-505. Reimbursement to developers.

- (a) Developers who meet the following conditions shall be entitled to reimbursement from revenues derived from the reimbursement fees established by this article:
- (1) Must be extended by the developer at his expense.
Costs of any such facilities which are financed through special improvement districts shall not be reimbursed.
 - (2) .
 - (3) Total project costs for the extension of the special benefit facilities must be at least ten thousand dollars (\$10,000.00) and may include engineering costs in addition to construction costs.
 - (4)
 - (5)
 - (6) Upon completion of the extension of the facilities, the developer must convey all right, title and interest in the facilities of the city.
 - (7) Developer shall, at all times, provide to the city a current address for purposes of mailing reimbursement payments to developer. If the City does not have a current address on file at the time of reimbursement, the developer will not receive nor be due a reimbursement.
 - (8) Extension of facilities must be done in compliance with all rules, regulations, resolutions and ordinances of the city, including but not limited to standards for design and construction of the facilities.
 - (9) Violation of any of the conditions listed in this section may be grounds for denial of any reimbursement to developer.
- (b) All reimbursement payments to developers shall be subject to the following terms and conditions:
- (1) Reimbursements are payable solely from revenues derived from payment of reimbursement fees as established in this article. Reimbursement payments are limited to reimbursement fees actually collected, less all administrative costs incurred by the city..
 - (2) Reimbursement fees paid to the city shall be accumulated and paid to developer annually on each November first following acceptance of the facilities by the city.
 - (3) Reimbursement payments shall not include any interest charges.
 - (4) Reimbursement payments to developer shall be limited to reimbursement fees paid to the city on or before the thirtieth (30th) anniversary of the date of acceptance of the facilities by the city.
 - (5) Any reimbursement fees paid to the city for facilities that were constructed by a developer whereby the developer does not meet all criteria of section 26-505 shall be retained by the city and used for construction of additional water and wastewater system facilities.
 - (6) All reimbursements made to the City that are part of an existing reimbursement agreement shall be paid to the developer in accordance with the terms of said agreement. Any reimbursements collected by the city that are not paid to a developer due to terms of the agreement shall be retained by the city and used for construction of additional water and wastewater system facilities.

(Ord. No. 85-4641, § 1, 5-6-85; Ord. No. 06-5356, § 10, 1-9-06; Ord. No. 11-5527, § 5, 1-10-11; Ord. No. 15-5650 , § 3, 3-9-15)

Editor's note(s)—Ord. No. 06-5356, § 10, adopted January 9, 2006, renumbered the former § 26-504 as current section 26-505, and changed the title from "Reimbursement" to "Reimbursement agreements." Said ordinance subsequently renumbered the former § 26-505, which pertained to applicability, as current § 26-507. The historical notation of former §§ 26-504 and 26-505 has been preserved for reference purposes.

Sec. 26-506. Compensation agreements.

- (a) Developers who meet the following conditions shall be entitled to compensation by the city:
- (1) Water/wastewater general benefit facilities must be constructed by the developer at his expense.
 - (2) a. Property to be served by the extension shall be located, at the time of request for service, within Zones 1 or 3 as defined and shown on the limits of annexation map.
b. Property located inside Zone 2 shall not be eligible for compensation but will be eligible for reimbursement under section 26-505. The developer's property and any other property in this category subject to payment of a reimbursement fee and immediately served by the extension shall receive a reduction in the water and/or wastewater system development fee. The reduction shall be the amount commensurate with the general benefit facilities portion of the system development fee.
 - (3) Developer shall provide to the city sufficient verifiable cost data to determine the appropriate amount of compensation within thirty (30) days of final inspection of the water and/or wastewater facilities and approval and acceptance by the city that all construction was completed according to the approved plans and specifications.
 - (4) Developer shall enter into a compensation agreement with the city at the time the city approves the developer's application for extension of water and/or wastewater facilities or, in the case of a replacement project, at the time of submittal of preliminary plans and specifications by the developer.
 - (5) Upon completion of the extension or replacement of the water and/or wastewater facilities, the developer must convey all right, title and interest in the facilities to the city.
 - (6) Extension or replacement of water and/or wastewater facilities must be done in compliance with all city, state and federal laws, rules, and regulations including, but not limited to, selection of consulting engineer standards for design and construction of the facilities, competitive bidding and contract requirements for cities, prevailing wage rates, non-discrimination requirements, etc.
- (b) All compensation payments to developers shall be subject to the following terms and conditions:
- (1) The extent, timing, and manner of the city's participation in a water and/or wastewater facilities extension or replacement is determined in conformance with the city's approved budget, the city's water/wastewater extension policy and the developer's compliance with city, state and federal laws, rules, and regulations. Extensions or replacements not eligible for compensation according to these city policies and practices must be constructed by the developer at the customer's expense.
 - (2) Developer shall, at all times, provide to the city a current address for purposes of mailing compensation to developer.
 - (3) Compensation is limited to construction and engineering costs attributable to water and/or wastewater facilities described in the compensation agreement, less all administrative costs incurred by the city. In no event will compensation exceed the actual cost to the developer of extending or replacing the water and/or wastewater facilities.
 - (4) Compensation shall not include any interest charges.

(Ord. No. 06-5356, § 13, 1-9-06; Ord. No. 11-5527, § 6, 1-10-11; Ord. No. 15-5650, § 4, 3-9-15)

ARTICLE 26-600. INDUSTRIAL WASTE DISCHARGE³

Sec. 26-601. Purpose, policy, applicability and authority of the city.

- (a) *Purpose.* This article sets forth uniform requirements for industrial users of the city's publicly owned treatment works (POTW) and enables the city to comply with applicable state and federal laws, including the Clean Water Act (33 U.S.C. Section 1251 et seq.), the General Pretreatment Regulations (40 CFR Part 403) and the city's Montana Pollutant Discharge Elimination System (MTPDES) permit. The objectives of this article are to:
- (1) Prevent the introduction of pollutants into the POTW which will interfere with or upset the operation of the POTW or interfere with sludge use or disposal.
 - (2) Prevent the introduction of pollutants into the POTW which may pass through the system without adequate treatment and into receiving waters or the atmosphere or otherwise be incompatible with the system.
 - (3) Prevent water quality violations resulting from direct discharges into waters of the state, or violations of the MTPDES permit for the wastewater system treatment plant.
 - (4) Improve the opportunity to recycle and reclaim wastewaters and sludges from the system.
 - (5) Provide for equitable distribution of the costs of the program.
 - (6) To provide for and promote the general health, safety and welfare of the citizens residing within the city and connecting jurisdictions.
 - (7) Enhance the efficiency and cost-effective operation of the POTW.
 - (8) Protect the health and safety of city wastewater system workers and the general public.
 - (9) Protect the municipal wastewater system and wastewater treatment plant from physical damage.
- (b) *Policy.* This article provides for the regulation of industrial users of the city's wastewater system through implementation and enforcement of the industrial pretreatment program. The city is authorized to issue industrial discharge permits to industrial users enforce pretreatment standards and requirements, monitor discharges to the POTW, require industrial user monitoring and reporting and take other actions to meet the objectives of this article. The industrial pretreatment program protects the wastewater system treatment and hydraulic capacity, improves the ability to serve existing and new customers within the service area of the wastewater system, outlines fees and charges for the equitable distribution of costs resulting from the program established herein and establishes penalties and remedies for violations of pretreatment standards and requirements.

³Editor's note(s)—Ord. No. 13-5600, § 1(Att. A), adopted May 28, 2013, amended article 26-600 in its entirety to read as herein set out. Formerly, article 26-600, sections 26-601—26-612, pertained to similar subject matter, and derived from Ord. No. 85-4663, §§ 1—12, adopted September 9, 1985; Ord. No. 91-4886, §§ 1, 3—7, adopted September 9, 1991; Ord. No. 92-4906, §§ 2, 4, 5, adopted July 27, 1992; Ord. No. 97-5022, §§ 7, 8, adopted May 27, 1997, and Ord. No. 06-5356, §§ 14, 15, adopted January 9, 2006.

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- (c) *Applicability.* Any industrial user, the discharge from which directly or indirectly enters the city's POTW from areas within or without the boundaries of the city, shall be bound by this article as amended. This article may be enforced against any industrial user. It shall be unlawful for any industrial user to discharge any domestic or non-domestic wastewater into any natural waterway, any surface drainage, or storm drain in any area under the jurisdiction of the city. No industrial wastewater shall be discharged to the POTW unless done so in compliance with the provisions of this article. Where an owner of property leases premises to a person as a tenant under any rental or lease agreement, if either the owner or the tenant is an industrial user, either or both may be held responsible for compliance with the provisions of this article. Except as otherwise provided herein, the administrator shall implement, administer and enforce the provisions of this article.
- (d) *Authority of the city.*
- (1) Except as otherwise specified, the city administrator shall administer, implement, and enforce the provisions of this article. Any powers granted to or duties imposed upon the city administrator may be delegated by the city administrator to other city personnel.
 - (2) The city shall attempt to notify in writing any industrial user whom they have cause to believe is subject to a categorical pretreatment standard or requirement, or other applicable requirements promulgated by the EPA under the provisions of Section 204(b) or 405 of the Act, or under the provisions of Sections 3001, 3004, or 4004 of the Solid Waste Disposal Act. Failure of the city to notify industrial users shall not relieve said industrial users from the responsibility of complying with applicable requirements. It is the responsibility of significant industrial users to apply for and receive a permit prior to discharge, whether or not the industrial user has been identified and formally requested to do so.
 - (3) If wastewaters containing any pollutant, including excess flow, or as otherwise defined in this article, are discharged or proposed to be discharged to the POTW, the city may take any action necessary to:
 - (i) Prohibit the discharge of such wastewater;
 - (ii) Require an industrial user to demonstrate that in-plant facility modifications will reduce or eliminate the discharge of such substances in conformity with this article;
 - (iii) Require treatment, including but not limited to storage facilities or flow equalization necessary to reduce or eliminate the potential for a discharge to violate this article;
 - (iv) Require the industrial user making, causing or allowing the discharge to pay any additional cost or expense incurred by the city for handling, treating, disposing or remediation costs as a result of wastes discharged to the wastewater treatment system;
 - (v) Require the industrial user to apply for and obtain a permit;
 - (vi) Require timely and factual reports from the industrial user responsible for such discharge; or
 - (vii) Take such other action as may be necessary to meet the objectives of this article.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-602. Definitions.

Unless the context specifically indicates otherwise, the words and terms used herein are defined and shall be interpreted for purposes of this article as follows:

Act means the Federal Water Pollution Control Act, Public Law 92-500, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

Administrator means the City of Billings Administrator or designee.

Approval authority is the Regional Administrator for Region 8, Environmental Protection Agency.

Authorized representative of the industrial user is:

- (a) If the industrial user is a corporation:
 - (1) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - (2) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including any person having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for industrial discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (b) If the user is a partnership or sole proprietorship: A general partner or proprietor, respectively.
- (c) If the user is a federal, state, or local government facility: A city or district or highest official appointed or designated to oversee the operation and performance of the activities of the governmental facility, or their designee.
- (d) The individuals described in subsections (a) through (c), above, may designate another authorized representative if the authorization is made in writing, the authorization specifies the individual or a position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

Best management practices (BMPs) are schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the general and specific prohibitions listed in section 26-604 of this article. BMPs may also include, but are not limited to, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs shall be considered local limits and pretreatment standards for the purposes of this article and Section 307(d) of the Act (40 CFR Section 403.5(c)(4)).

Biochemical oxygen demand (BOD₅) is the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure over a period of five (5) days at twenty degrees (20°) Celsius and expressed in terms of milligrams per liter (mg/L).

Categorical industrial user is an industrial user subject to a categorical pretreatment standard.

Categorical pretreatment standard or *categorical standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. Section 1317) that apply to a specific category of industrial users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

City means the City of Billings, Montana.

Code means the City of Billings, Montana City Code.

Composite sample is a representative flow-proportioned sample generally collected within a 24-hour period and combined according to flow. Time-proportional sampling may be approved or used by the district where time-proportional samples are believed representative of the discharge.

Control authority means the City of Billings.

Cooling water means:

- (a) *Contact*. Water used for cooling purposes which comes in contact with any raw material, intermediate product, waste product or finished product.
- (b) *Noncontact*. Water used for cooling purposes which does not come in contact with any raw material, intermediate product, waste product or finished product and the only pollutant added is heat.

Council means the city council of the City of Billings, Montana.

Daily maximum discharge limit is the maximum allowable concentration of a pollutant(s) that may be discharged during a 24-hour period or as specified in an industrial user discharge permit. Where daily maximum limitations are expressed in units of mass, the discharge is the total mass discharged over the sampling period.

Department means the public works department of the City of Billings.

Director is the City of Billings director of public works or designee that supervises the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities under this article, or their duly authorized representative.

Domestic sewage is domestic (sanitary) wastewater from residential sources including, but not limited to wastewater from kitchen, bath, and laundry facilities; or wastewater from the personal sanitary conveniences (toilets, showers, bathtubs, fountains, noncommercial sinks and similar structures) of commercial, industrial or institutional buildings, provided that the wastewater exhibits characteristics that are similar to those of wastewater from normal residential activities.

Environmental Protection Agency or EPA means the United States Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of said agency.

Existing source is a source of discharge by an industrial user, the construction of which commenced prior to the publication of the proposed categorical pretreatment standard which is subsequently promulgated in accordance with Section 307 of the Clean Water Act, or as otherwise specified in the applicable categorical pretreatment standard.

Grab sample means a sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.

Gravity grease interceptor is a plumbing appurtenance or appliance that is installed in a sanitary drainage system to intercept FOG (fats, oil and grease) from a wastewater discharge and is designed for gravity separation considering calculated retention times and volumes for each facility. This is an in-ground interceptor that is located outside the facility.

Grease trap is a device designed to retain grease from one (1) to a maximum of four (4) fixtures per International Plumbing Code. A grease trap is not appropriate for use on heated water (e.g. dishwasher) or in-line to a waste disposal unit (e.g., garbage disposal and garbage grinders). A grease trap is a small, indoor device. Grease traps are not approved for installation in food service establishments that prepare food on site, or serve catered food and have a dishwasher or garbage disposal.

Holding tank waste means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, recreational vehicles, septic tanks or septage haulers.

Indirect discharge or discharge is the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act (including holding tank waste discharged into the system).

Industrial means of or pertaining to industry, manufacturing, agriculture, commerce, trade, or business, as distinguished from domestic or residential.

Industrial discharge permit is a permit issued to an industrial user that limits and/or prohibits the discharge of pollutants or flow to the POTW and establishes other pretreatment standards and requirements as set forth in section 26-606 of this article.

Industrial user is a source of indirect discharge.

Industrial (non-domestic) waste is the liquid or solid wastes from industrial manufacturing processes, trade or business activities producing non-domestic or non-residential sewage as distinct from domestic wastewater.

Instantaneous limit is the maximum or minimum concentration or measurement of a pollutant property allowed to be discharged at any time for any length of time. For pollutants, compliance is typically determined by use of a grab sample.

Interference is a discharge, which alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW treatment processes, or operations or its sludge processes, use or disposal, and
- (b) Therefore, is a cause of violation of any requirement of the city's MPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued hereunder, or any more stringent state or local regulations: Section 405 of the Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resources Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the Solids Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

Local limits mean any regulation containing pollution discharge limits promulgated by the city in accordance with 40 CFR Section 403.5(c) and (d), which are deemed to be pretreatment standards and contained in subsection 26-604(c) of this article.

Montana Pollutant Discharge Elimination System (MPDES) permit is a permit issued pursuant to Section 402 of the Act (33 U.S.C. Section 1342), allowing discharge of pollutants from point sources into navigable waters of the United States or waters of the state.

New source means:

- (a) Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
 - (1) The building, structure, facility or installation is constructed at a site at which no other source is located;
 - (2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (3) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.
- (b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the

criteria of subsections (a)(2) or (a)(3) of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

- (c) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
- (1) Begun, or caused to begin as part of a continuous onsite construction program:
 - (i) Any placement, assembly, or installation of facilities or equipment;
 - (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - (2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

Pass through means a discharge which exits the WWTP into water of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's MPDES permit, including an increase in the magnitude or duration of a violation.

Person means any individual, partnership, co-partnership, firm, company, corporation, group, association, trust, estate, governmental entity, political subdivision, or any other legal entity, or their legal representatives, agents, or assigns.

pH is the intensity of acid or base condition of the solution expressed as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in moles per liter of solution and reported as standard units (SU).

Pollutant means any dredged soil, solid waste, incinerator residue, filter backwash, sewage, garbage, septic waste, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD₅, COD, toxicity, or odor) discharged into or with water.

Pollution means the alteration of the chemical, physical, biological, or radiological integrity of water by human activity.

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR Section 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR Section 403.6(e).

Pretreatment requirement means any substantive or procedural requirement related to pretreatment, other than a categorical pretreatment standard, imposed on an industrial user.

Pretreatment standard, national pretreatment standard, or standard means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. The term includes prohibitive discharge limits, local limits, and best management practices that are or may be established by the city. In cases of differing standards or regulations, the most stringent standard shall apply.

Publicly owned treatment works (POTW) means a treatment works as defined by Section 212 of the Act (33 U.S.C 1292), which is owned by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature and any sewers, pipes or other conveyances which convey wastewater to the treatment plant. The term also means the municipality having jurisdiction over the indirect discharges to and the discharges from the treatment works.

Rules and regulations means all rules and regulations promulgated by the administrator for administration and operation of the municipal water and wastewater utilities as provided for in section 26-101 of this Code.

Septage means the mixed liquid and solid contents pumped from septic tanks used for receiving primarily segregated domestic wastes or wastes from sanitary conveniences.

Significant industrial user (SIU): Except as provided in subsections (c) and (d) of this definition, a significant industrial user is:

- (a) An industrial user subject to categorical pretreatment standards; or
- (b) An industrial user that:
 - (1) Discharges an average of twenty-five thousand gallons per day (25,000 gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);
 - (2) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
 - (3) Is designated as such by the city on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
- (c) The city may determine that an industrial user subject to categorical pretreatment standards is a non-significant categorical industrial user rather than a significant industrial user upon a finding that the industrial user never discharges more than one hundred gallons per day (100 gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:
 - (1) The industrial user, prior to the city's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;
 - (2) The industrial user annually submits the certification statement as found in 40 CFR 403.12(g) together with any additional information necessary to support the certification statement; and
 - (3) The industrial user never discharges any untreated concentrated wastewater.
- (d) Upon finding by the city that an industrial user meeting the criteria in subsection (b) of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standards or requirement, the city may at any time, on its own initiative or in response to a petition received from an industrial user, and in accordance with 40 CFR 403.8(f)(2), determine that such industrial user is not a significant industrial user.

Slug discharge means any discharge at a flow rate or concentration, which could cause a violation of the specific prohibitions in subsection 26-604(b). A slug discharge is any discharge of a non-routine, episodic nature,

including but not limited to an accidental spill or a non-customary batch discharge, or a discharge which exceeds the hydraulic or design of an industrial users treatment system or any part of the treatment unit including a discharge which has a reasonable potential to cause interference or pass through or in any other way violate an applicable pretreatment standard or requirement or an industrial discharge permit issued by the city.

Standard Industrial Classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, as amended.

State means the State of Montana.

Total suspended solids are the total suspended matter, expressed in milligrams per liter, that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering in accordance with procedures approved in 40 CFR Part 136, as amended.

Toxic pollutant includes, but is not limited to, any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the EPA under the provisions of Section 307(a) of the Act or as otherwise listed in 40 CFR Part 122, Appendix D.

Wastewater or sewage means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions whether treated or untreated, which are discharged into or permitted to enter the POTW.

Wastewater treatment plant (WWTP) is that portion of the wastewater system designed to provide treatment to wastewater.

Waters of the state means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-603. Abbreviations.

The following abbreviations shall have the designated meanings for the purposes of this article and the supplemental rules and regulations:

BMCC: Billings, Montana City Code.

BMP: Best management practice.

BOD₅: Biochemical oxygen demand.

CFR: Code of Federal Regulations.

EPA: Environmental Protection Agency.

LEL: Lower explosive limit.

mg/L: milligrams per liter.

MPDES: Montana Pollutant Discharge Elimination System.

POTW: Publicly owned treatment works.

SIC: Standard Industrial Classification.

SIU: Significant industrial user.

SNC: Significant noncompliance.

TSS: Total suspended solids.

WWTP: Wastewater treatment plant.

U.S.C.: United States Code.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-604. Prohibited discharges and limitations.

- (a) General prohibitions. An industrial user may not introduce into a POTW any pollutant(s) which cause pass through or interference. These general prohibitions and the specific prohibitions in subsection (b) of this section apply to each industrial user introducing pollutants into a POTW whether or not the industrial user is subject to other pretreatment standards or requirements.
- (b) The following specific prohibitions apply to the discharge of wastewater to the POTW from all industrial users:
- (1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit or sixty (60) degrees Celsius using the test methods specified in 40 CFR Section 261.21. The administrator may require industrial users with the potential to discharge flammable, combustible or explosive substances to install and maintain an approved combustible gas detection meter or explosion hazard meter. No two (2) successive readings on an explosion hazard meter at the point of discharge shall be more than five (5) percent, nor any one (1) reading more than ten (10) percent, of the lower explosive limit (LEL) of the meter.
 - (2) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.5 or greater than 12.5.
 - (3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in the interference.
 - (4) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW.
 - (5) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds forty (40) degrees Celsius (104°F) unless the EPA, upon request of the POTW, approves alternate temperature limits.
 - (6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
 - (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

Any discharge containing a toxic, poisonous or infectious substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause worker health and safety problems or create any hazard in the receiving waters of the POTW.
 - (8) Any trucked or hauled pollutants, except as approved by the city in writing and discharged at the WWTP septage receiving station.

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- (9) Any water or waste containing free or floating oil and grease, or any discharge containing animal fat or grease by-product in excess of one hundred milligrams per liter (100 mg/L) except:
 - (i) A food service establishment that has installed and is properly operating and maintaining a grease interceptor and implementing required BMPs; or
 - (ii) An industrial user that is permitted as for trucked and hauled waste and discharges its waste at a discharge point specified by the city and in full compliance with its permit.
 - (10) Removing wastes collected in a grease trap, grease/sand interceptor, waste collection tank or other treatment device and reintroducing any portion of the wastes back into the wastewater collection system either directly or indirectly.
 - (11) Stormwater drainage from ground resulting in infiltration and inflow (I&I) through the industrial user's service line(s) or surface, roof drains, catch basins, unroofed area drains (e.g. commercial car washing facilities) or any other source unless otherwise approved by the administrator. Specifically prohibited is the connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or ground water to a building sewer or building drain which in turn is connected directly or indirectly to the city's wastewater collection system. No person shall connect or discharge water from underground drains, sump pump discharges, natural springs and seeps, water accumulated in excavation or grading or any other water associated with construction activities unless specifically authorized by the administrator.
 - (12) Any substance which may cause the POTW's effluent, sludge, or residue to be unsuitable for, or interfere with, the reclamation or reuse process.
 - (13) A slug discharge as defined in section 26-602.
 - (14) Any substance which will cause the POTW to violate the MPDES permit or the receiving water quality standards.
 - (15) Any pollutant discharged directly into a manhole or other opening in the POTW unless specifically authorized by the city or as otherwise permitted under this article. Prohibited is the opening of a manhole or discharging into any opening in violation of this article.
 - (16) Liquid wastes from chemical toilets, and trailers, campers or other recreational vehicles which have been collected and/or held in tanks or other containers shall not be discharged into the POTW except at locations authorized by the city to collect such wastes.
 - (17) No chemicals, materials, or substances, including but not limited to, paints, solvents, boiler or water treatment chemicals, sludges, chemicals, or wastes shall be stored in proximity to a floor drain or other sewer openings. Containers shall be clearly labeled and stored in a place where the chemicals, materials, substances or wastes, in case of leakage or rupture of the container, cannot enter the wastewater collection system. The storage of any chemicals, materials, substances or wastes that leak or have potential to leak or discharge into the wastewater collection system which may create an explosion hazard or in any way have a deleterious effect to the POTW or constitute a nuisance or a hazard to POTW personnel, the general public, the environment, or the receiving stream shall be prohibited.
 - (18) Any water contaminated as a result of discharge from aboveground and/or underground gasoline, diesel fuels, fuel oil, kerosene, and jet fuel tanks, tank accessories, and/or pipelines without applying for and obtaining a permit prior to discharge.
 - (19) Any wastes containing detergents, surface-active agents, or other substances in concentrations which cause excessive foaming in the POTW or cause or contribute to interference or pass through.

- (20) Wastes that have been collected and/or held in a tank or other container and where such wastes fail to comply with any pretreatment standard.
 - (21) Any radioactive substance, the discharge of which, does not comply with limits established by the district or other regulations set forth by the Montana Department of Environmental Quality or that violates any applicable federal standards.
 - (22) Any water or waste which contains grease or oil or any other substances that will solidify or become discernibly viscous at temperatures between thirty-two degrees (32°) Fahrenheit (0° Celsius) and one hundred fifty degrees (150°) Fahrenheit (65.5° Celsius).
 - (23) Any garbage that has not been properly shredded.
 - (24) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substance capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the POTW.
 - (25) Any discharge containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the WWTP.
 - (26) Any noxious or malodorous gas or substance capable of creating a public nuisance.
- (c) Reserved.
- (d) The following pollutant limits are established to protect against pass through and interference and will be applied to discharges from significant industrial users through industrial wastewater permits or control mechanisms, based on the reasonable potential to exceed the following maximum allowable discharge limits:

Pollutant	Daily Maximum Discharge Limit ⁽¹⁾	Units ⁽²⁾
Arsenic	1.52	#/day
Cadmium	0.04	mg/l
Chromium	12.96	mg/l
Chromium VI	1.33	mg/l
Copper	2.91	mg/l
Cyanide	0.39	mg/l
Lead	1.04	mg/l
Mercury	0.0017	mg/l
Nickel	3.44	mg/l
Selenium	5.17	#/day
Silver	0.375	mg/l
Zinc	12.76	mg/l

⁽¹⁾ All pollutants shown in the table are total.

⁽²⁾ All mass limits (#/day) proportionately allocated to permitted users.

- (e) Dilution is prohibited as a substitute for treatment and shall be a violation of this article. Except where expressly authorized to do so by an applicable pretreatment standard or requirement, no industrial user shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The city may impose mass limitations on industrial users which are using dilution to meet

applicable pretreatment standards or requirements or in other cases where the imposition of mass limitations is appropriate.

- (f) All industrial users subject to a categorical pretreatment standard shall comply with all requirements of such standard, and shall also comply with any limitations contained in this article. Where the same pollutant is limited by more than one pretreatment standard, the limitations which are more stringent shall prevail. Compliance with categorical pretreatment standards shall be the timeframe specified in the applicable categorical pretreatment standard.
- (g) The city may establish more stringent pollutant limits, additional site-specific pollutant limits, best management practices, or additional pretreatment requirements when, in the judgment of the city, such limitations are necessary to implement the provisions of this article.
- (h) Promulgation of standards.
 - (1) Upon the promulgation of the federal categorical pretreatment standard for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed by this article for sources in that subcategory, shall immediately supersede the limitations imposed by this article as required by the applicable categorical pretreatment standard.
 - (2) State requirements and limitations on discharges shall apply in any case where they are more stringent than federal pretreatment standards and requirements or those in this article.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13; Ord. No. 26-604, § 1, 9-11-17)

Sec. 26-605. Pretreatment and monitoring facilities.

- (a) Treatment required. An industrial user shall provide necessary wastewater treatment at the industrial user's expense as required to comply with this article and shall achieve compliance with all pretreatment standards and requirements within the time limitations specified by the EPA, the state, or the city, whichever is more stringent. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the administrator for review and shall be acceptable before discharge from the facility. The review of such plans and operating procedures will in no way relieve the industrial user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this article.
- (b) Wastewater discharge control. The city may require an industrial user to restrict discharge during peak flow periods, designate that certain wastewater be discharged only into specified sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and demonstrate the industrial user's compliance with the requirements of this article.
- (c) Flow equalization. The city may require any industrial user discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An industrial discharge permit may be issued solely for flow equalization.
- (d) Monitoring facilities. The city may require an industrial user to install at the industrial user's expense, suitable monitoring facilities, instrumentation or equipment that allows for the representative sampling and accurate observation of wastewater discharges. Whether constructed on public or private property, the monitoring facilities shall be constructed in accordance with the city's requirements and all applicable construction standards and specifications. Monitoring equipment and structures shall be maintained in proper working order and kept safe and accessible at all times to city personnel. The monitoring equipment shall be located and maintained on the industrial user's premises outside of the building unless otherwise approved by the city. When such a location would be impractical, the city may allow such facility to be constructed in the public street or easement area, with the approval of the agency having jurisdiction over

such street or easement, and located so that it will not be obstructed by public utilities, landscaping or parked vehicles.

- (e) Multitenant buildings. When more than one industrial user is able to discharge into a common service line, the city may require installation of separate monitoring equipment for each industrial user.
- (f) Flow, pH, LEL and other appropriate meters and instrumentation. If the city determines that an industrial user needs to measure and report wastewater flow, discharge process wastewaters necessitating continuous pH measurement or discharge wastewater that may contain flammable substances may be required to install and maintain, at the industrial user's expense, approved meters, structures and equipment.
- (g) Unless approved by the administrator in writing, no industrial user shall cover any manhole, sewer cleanout, or other openings in the wastewater collection system with earth, paving, or otherwise render it inaccessible.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-606. Industrial discharge permits.

- (a) *Permits required.* All significant industrial users proposing to connect to, or discharge into, any part of the wastewater system shall apply for and obtain an industrial discharge permit prior and remit payment for all fees required by Rule 24.7 of the rules and regulations to commencing discharge to the POTW. A separate permit may be required for each industrial user, building or complex of buildings. Such significant industrial users shall immediately contact the city and obtain an industrial discharge permit.
- (b) *New industrial users: Applying for an industrial discharge permit.* Any industrial user required to obtain an industrial discharge permit who proposes to begin or recommence discharging into the POTW must apply for and obtain such permit prior to the beginning or recommencing of such discharge. The industrial user shall file a permit application on forms provided by the city containing the information specified in subsection (f) below. The completed application for the industrial discharge permit must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.
- (c) *Existing industrial users: Applying for an industrial discharge permit re-issuance.* An industrial user with an expiring industrial discharge permit shall apply for a new permit by submitting a complete permit application at least ninety (90) days prior to the expiration of the industrial user's existing permit. The industrial user shall file a permit application on forms provided by the city containing the information specified in subsection (f) below. An Industrial User with an existing permit that has filed a complete and timely application may continue to discharge as approved in writing by the city through an administrative extension of the existing permit if the delay in permit issuance is not due to any act or failure to act on the industrial user's part.
- (d) *Other industrial users.* The city may require other non-significant industrial users to apply for and obtain wastewater discharge permits or similar control mechanisms necessary to carry out the purposes of this article. The city may issue a zero discharge permit to prohibit the discharge of some or all non-domestic process wastewater from an industrial user.
- (e) *Enforceability.* Any violation of the terms and conditions of an industrial discharge permit, failure to apply for a permit as required, or discharging without a required permit shall be deemed a violation of this article and subjects the industrial user to enforcement by the city. Obtaining an industrial discharge permit does not relieve a permittee of its obligation to comply with all state and federal pretreatment standards or requirements.
- (f) *Permit application contents.* In support of the application, the industrial user shall submit, in units and terms appropriate for evaluation, the following information:

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- (1) Name of business, address of the facility, location of the discharge if different from facility address, and contact information of the authorized representative of the industrial user.
 - (2) Environmental permits. A list of any environmental control permits held by or for the facility.
 - (3) Description of operations.
 - (i) A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production);
 - (ii) The Standard Industrial Classification(s) of the operation(s) carried out by such industrial user;
 - (iii) A schematic process diagram, which indicates all process tanks, process lines, treatment systems, drains, and points of discharge to the POTW from the regulated process;
 - (iv) Types of wastes generated;
 - (v) A list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
 - (vi) A list of hazardous waste(s) generated and a description of the storage area and procedures for the wastes;
 - (vii) Number of employees; and
 - (viii) Hours of operation, and proposed or actual hours of operation.
 - (4) Time and duration of discharges including the date the industrial user first began discharge or plans to discharge to the POTW.
 - (5) The location for sampling the wastewater discharges from the industrial user.
 - (6) Flow measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR Section 403.6(e). For new sources and new permittees not currently discharging, an estimate of flows may be used for meeting the requirements of the baseline monitoring report required in subsection 26-611(a).
 - (7) Measurement of pollutants.
 - (i) The pretreatment standards applicable to each regulated process;
 - (ii) The results of sampling and analysis identifying the nature and concentration, and/or mass of regulated pollutants in the discharge from each regulated process where required by the standard or by the city;
 - (iii) Instantaneous, daily maximum and long-term average concentrations, or mass, where required, shall be reported;
 - (iv) The sample shall be representative of daily operations and shall be collected in accordance with procedures set out in section 26-610. Where the standard requires compliance with a BMP or pollution prevention alternative, the industrial user shall submit documentation as required by the city or the applicable standards to determine compliance with the standard; and
 - (v) Analyses must be performed in accordance with procedures set out in subsection 26-610(c).
 - (8) A list of hazardous waste(s) generated and a description of the storage area and procedures for the wastes.
 - (9) Slug discharge control plan for significant industrial users and other industrial users as described in section 26-602 shall be submitted as required by the city.

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- (10) Compliance schedule. If additional pretreatment and/or operation and maintenance (O&M) will be required to meet the pretreatment standards, the shortest schedule by which the industrial user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

The following conditions shall apply to this schedule:

- (i) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.). No such increment shall exceed nine (9) months.
 - (ii) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the administrator including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the administrator.
- (11) Certification. A statement, reviewed by an authorized representative of the industrial user and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.
- (12) Signatory certification. All industrial discharge permit applications and certification statements must be signed by an authorized representative of the industrial user and contain the applicable certification statement(s) in subsection 26-611(h).
- (13) Any other information as may be deemed by the administrator to be necessary to evaluate the permit application.
- (g) *Industrial discharge permit issuance.*
- (1) Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period of less than five (5) years at the city's discretion or may be stated to expire on a specific date.
 - (2) Where the city is establishing enforceable permit specific pretreatment standards or requirements, the permit shall be noticed for public comment for thirty (30) days in a newspaper of general circulation that provides meaningful public notice. The city shall consider all comments that are received prior to issuing the permit.
 - (3) The city shall issue an industrial discharge permit to the applicant if the city finds that all of the following conditions are met:
 - (i) The applicant has provided a timely and complete permit application to the city;
 - (ii) The proposed discharge by the applicant is in compliance with the limitations established in this article;
 - (iii) The proposed operation and discharge of the applicant would permit the normal and efficient operation of the POTW; and
 - (iv) The proposed discharge by the applicant would not result in a violation by the city of the terms and conditions of its MPDES permit or cause pass through or interference.

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- (4) If the city finds that the condition set out in subsection (3)(ii) of this section is not met, the city may, at their discretion, issue an industrial discharge permit to the applicant if the conditions set out in subsections (3)(i), (3)(iii) and (3)(iv) of this section have been met and if the applicant submits, and the city approves, a compliance schedule setting out the measures to be taken by the applicant and the dates that such measures will be implemented to assure compliance with applicable pretreatment standards. At no time shall a discharge be allowed to cause a violation of any general or specific prohibition established in section 26-604 nor shall the final compliance date for a categorical pretreatment standard be extended.
- (5) Any person, including the industrial user, may petition the city to reconsider the terms of an industrial discharge permit within thirty (30) days of the permit issuance. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal. In its petition, the appealing party must indicate the permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit. The effectiveness of the industrial discharge permit shall not be stayed pending the appeal. If the city does not act on such appeal within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider, not to issue an industrial discharge permit, or not to modify a permit, shall be considered final administrative action for purposes of judicial review.
- (h) *Transferability.* Industrial discharge permits are issued to a specific industrial user for a specific operation. An industrial discharge permit shall not be reassigned or transferred or sold to a new owner, new industrial user, different premises, or a new or changed operation without the prior written approval of the city. Any succeeding owner shall comply with the terms and conditions of the existing permit until a new permit is issued. The permittee shall notify the city at least fourteen (14) days prior to any change of ownership.
- (i) *Industrial discharge permit conditions.* Industrial discharge permits shall be expressly subject to all provisions of this article and all other applicable regulations, user charges and fees established by the city. Permits may contain the following:
- (1) A statement that indicates the permit's issuance date, expiration date and effective date;
 - (2) A statement on permit transferability;
 - (3) The unit charge or schedule of user charges and fees for the wastewater to be discharged into a public sewer;
 - (4) Limits on the average and/or maximum wastewater constituents and characteristics including, but not limited to, effluent limits, including best management practices, based upon applicable pretreatment standards;
 - (5) Limits on average and maximum rate and time of discharge or requirements for flow;
 - (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
 - (7) Self-monitoring, sampling, reporting, notification and record-keeping requirements including, but not limited to, identification of the pollutants to be monitored, sampling location, sampling frequency and sample type, based on federal, state and local law;
 - (8) Best management practices (BMPs) to control specific pollutants as necessary to meet the objectives of this article;
 - (9) Compliance schedules;
 - (10) Requirements for notification of the city of any new introduction of wastewater constituents or any significant change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system;

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- (11) Requirements to control and report any slug discharges and notify the city immediately of any changes at its facility affecting potential for a spill or slug discharge and to notify the POTW immediately in the event of a slug, spill or accidental discharge to the POTW;
 - (12) Statements of applicable administrative, civil and criminal penalties for the violation of pretreatment standards and requirements, the permit, this article, and any applicable compliance schedule;
 - (13) Requirements to reapply for a new permit prior to expiration of the existing permit;
 - (14) Additional monitoring to be reported;
 - (15) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
 - (16) Closure requirements for permitted facilities undergoing partial or complete closure activities to ensure closure activities are completed and wastes have been properly disposed and remaining access to sanitary and storm sewers are protected;
 - (17) Other conditions as deemed appropriate by the city to ensure compliance with all applicable pretreatment standards and requirements.
- (j) *Industrial discharge permit modification.* The city may modify an industrial discharge permit for good cause, including, but not limited to, the following reasons:
- (1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
 - (2) To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of the industrial discharge permit issuance;
 - (3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
 - (4) Information indicating that the permitted discharge poses a threat to the POTW, city personnel or the receiving waters;
 - (5) Violation of any terms or conditions of the industrial discharge permit;
 - (6) Misrepresentations or failure to fully disclose all relevant facts in the industrial discharge permit application or in any required reporting;
 - (7) To reflect a transfer of the facility ownership and/or operation to a new owner/operator;
 - (8) To correct typographical or other errors in the industrial discharge permit; or
 - (9) Upon request of the permittee, provided such request does not result in a violation of any applicable pretreatment standards or requirements or this article. The filing of a request by the permittee for a permit modification does not stay any permit condition.
- (k) *Industrial discharge permit revocation.* A violation of the conditions of a permit, this article or of applicable state and federal regulations may be reason for revocation of such permit by the city. Upon revocation of the permit, any wastewater discharge from the affected industrial user shall be considered prohibited and in violation of this article. Grounds for revocation of a permit include, but are not limited to, the following:
- (1) Failure of an industrial user to accurately disclose or report the wastewater constituents and characteristics of any discharge;
 - (2) Failure of the industrial user to report significant changes in operations or wastewater constituents and characteristics as required;
 - (3) Denial of access to the industrial user's premises for the purpose of inspection or monitoring;

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- (4) Falsification of records, reports or monitoring results;
 - (5) Tampering with monitoring equipment;
 - (6) Misrepresentation or failure to fully disclose all relevant facts in the industrial discharge permit application;
 - (7) Failure to pay fines or penalties;
 - (8) Failure to pay sewer charges, surcharges, or pretreatment programs fees;
 - (9) Failure to meet compliance schedules;
 - (10) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
 - (11) Failure to provide required reports, including but not limited to, a wastewater survey, baseline monitoring report, 90-day compliance report, permit application, self-monitoring report or other permit required reports or notifications within the timeframe required by the city.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-607. Recordkeeping.

- (a) All industrial users shall retain, and make available for inspection and copying, all records, reports, monitoring or other data, applications, permits and all other information and documentation required by this article including documentation associated with best management practices.
- (b) Industrial users shall retain such records and shall keep such records available for inspection for at least three (3) years. This recordkeeping period shall be extended automatically for the duration of any litigation concerning the industrial user's compliance with any provision of this article, or when the industrial user has been specifically and expressly notified of a longer records retention period by the administrator.
- (c) Written reports will be deemed to have been submitted on the date postmarked. For reports which are hand delivered, the date of receipt of the report shall govern.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-608. Confidential information.

- (a) All records, reports, data or other information supplied by any person or industrial user as a result of any disclosure required by this article or information and data from inspections shall be available for public inspection except as otherwise provided in this Section, 40 CFR Section 403.14 and the laws of the state.
- (b) These provisions shall not be applicable to any information designated as a trade secret by the person supplying such information. Materials designated as a trade secret may include, but shall not be limited to, processes, operations, style of work or apparatus or confidential commercial or statistical data. Any information and data submitted by the industrial user which is desired to be considered a trade secret shall have the words "confidential business information," stamped on each page containing such information. The industrial user must demonstrate to the satisfaction of the city that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the industrial user.

Information designated as a trade secret pursuant to this section shall remain confidential and shall not be subject to public inspection except as ordered by a district court judge or supreme court of the state. Such information shall be available only to officers, employees or authorized representatives of the city charged with

implementing and enforcing the provisions of this article and properly identified representatives of the U.S. Environmental Protection Agency and the Montana Department of Environmental Quality.

Effluent data from any industrial user whether obtained by self-monitoring, monitoring by the city or monitoring by any state or federal agency, shall not be considered a trade secret or otherwise confidential. All such effluent data shall be available for public inspection.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-609. Reserved.

Sec. 26-610. Sample collection and analytical methods.

- (a) *Sample collection.* Compliance determinations with respect to prohibitions and limitations in this article may be made on the basis of either grab or composite samples of wastewater as specified by the city. Such samples shall be taken at a point or points which the city determines to be suitable for obtaining a representative sample of the discharge. Composite samples may be taken over a 24-hour period, or over a longer or shorter time span, as determined by the city to meet specific circumstances.
- (b) *Sample type.* Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, and based on data that is representative of conditions occurring during the reporting period.
 - (1) Except as indicated in subsections (2) and (3) below, the industrial user must collect representative wastewater samples using 24-hour flow proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is required by the city. Where time-proportional composite sampling or grab sampling is authorized by the city, the samples must be representative of the permitted discharge.
 - (2) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Compositing samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the city, as appropriate. In addition, grab samples may be required to show compliance with instantaneous local limits, including pH.
 - (3) For sampling required in support of baseline monitoring and 90-day compliance reports required in section 26-611, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds for facilities for which historical representative sampling data do not exist. Where historical data are available, the city may authorize a lower minimum. For the reports required by subsection 26-611(a), the industrial user is required to collect the number of grab samples necessary to assess and assure compliance with applicable pretreatment standards and requirements.
- (c) *Analytical requirements.* All pollutant analysis, including sampling techniques, to be submitted as part of an industrial discharge permit application, report, permit or other analyses required under this article shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and

analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the city or other parties approved by the EPA.

(d) *[Records.]* Records shall include for all samples:

- (1) The date, exact place, method, and time of sampling and the name of the person(s) taking the samples;
- (2) The date(s) analyses were performed;
- (3) Who performed each analysis;
- (4) The analytical techniques/methods used, including method detection limits and QA/QC sample results;
- (5) Calibration and maintenance records;
- (6) All chain-of-custody records; and
- (7) The results of each analysis.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-611. Reporting and notification requirements.

(a) *Periodic compliance reports—All significant industrial users.*

- (1) Any significant industrial user or other industrial user required by the city, subject to a federal, state, or city pretreatment standard or requirement must submit reports, at a frequency determined by the city but no less than once per six (6) months, indicating the nature, concentration of pollutants in the discharge which are limited by pretreatment standards and the average and maximum daily flows for the reporting period. In cases where the pretreatment standard requires compliance with a best management practices (BMPs) or pollution prevention alternatives, the industrial user must submit documentation required by the city or the pretreatment standard necessary to determine compliance status of the industrial user. All periodic compliance reports must be signed and certified in accordance with subsection (h).
- (2) All wastewater samples must be representative of the industrial user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that the sample results are unrepresentative of its discharge.
- (3) If an industrial user subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the city, using the methods and procedures prescribed in section 26-610, the results of this monitoring shall be included in the report.
- (4) The sampling and analyses required for the reporting outlined above may be performed by the city in lieu of the permittee. Where the city itself makes arrangements with the industrial user to collect all the information required for the report, the industrial user will not be required to submit the report.

(b) *Baseline monitoring reports (BMR)—Categorical industrial users.*

- (1) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR Section 403.6(a)(4), whichever is later, existing industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the city a report which contains the information listed in subsection (2) below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable

categorical pretreatment standard, shall submit to the city a report which contains the information listed in subsection (2) below. A new source shall report the method of pretreatment it intends to use to meet applicable pretreatment standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged from regulated process streams and other non-process streams.

(2) Industrial users described above shall submit the information set forth below.

(i) All information required in subsection 26-606(f).

(ii) Measurement of pollutants.

(A) The industrial user shall take a minimum of one (1) representative sample to compile the data necessary to comply with the requirements of this paragraph.

(B) Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the industrial user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 Section CFR 403.6(e) in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR Section 403.6(e) this adjusted limit along with supporting data shall be submitted to the city.

(C) Sampling and analysis shall be performed in accordance with section 26-610.

(D) The city may allow the submission of a BMR which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

(E) The BMR shall indicate the time, date, and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(F) Signature and report certification. All baseline monitoring reports must be signed in accordance with subsection (h) and signed by an authorized representative as defined in section 26-602.

(c) *Ninety-day compliance reports—Categorical industrial users.*

(1) New sources. All new sources subject to existing categorical pretreatment standards shall submit a report to the city within ninety (90) days from the date of first discharge to the POTW demonstrating actual and continuing compliance with those standards.

(2) Existing sources. All existing sources required to comply with newly promulgated categorical pretreatment standards shall submit a report to the city within ninety (90) days of the date on which compliance is required with those standards demonstrating that actual and continuing compliance with such standards has been achieved.

(3) Such 90-day compliance report shall contain at a minimum the information required in subsections 26-606(f)(6), (7), (10), (11), (12), and (13).

(d) *Twenty-four-hour notice and 30-day re-sampling.* If sampling performed by an industrial user indicates a violation of this article, the industrial user shall notify the city within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the city within thirty (30) days after becoming aware of the violation. The industrial user is not required to resample if the following occurs:

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- (1) The city performs sampling at the industrial user's facility at a frequency of at least once per month.
 - (2) The city performs sampling at the industrial user's facility between the time when the industrial user performs its initial sampling and the time when the industrial user receives the results of this sampling. It is the sole responsibility of the industrial user to verify if the city has performed this sampling.
- (e) *Slug discharge control plan.*
- (1) Each industrial user shall provide protection from accidental and slug discharges of pollutants regulated under this article. Facilities to prevent the discharge of spills or slug loads shall be provided and maintained at the industrial user's expense.
 - (2) The city shall evaluate whether each significant industrial user needs a slug discharge control plan or other action to control spills and slug discharges. The city may require an industrial user to develop, submit for approval, and implement a slug discharge control plan or take such other action that may be necessary to control spills and slug discharges.
 - (3) A slug discharge control plan shall address, at a minimum, the following:
 - (i) Detailed plans (schematics) showing facility layout and plumbing representative of operating procedures;
 - (ii) Description of contents and volumes of any process tanks;
 - (iii) Description of discharge practices, including non-routine batch discharges;
 - (iv) Listing of stored chemicals, including location and volumes;
 - (v) Procedures for immediately notifying the city of any spill or slug discharge. It is the responsibility of the industrial user to comply with the reporting requirements in subsection (f);
 - (vi) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response; and
 - (vii) Any other information as required by the city.
 - (4) Notice to employees. A notice shall be permanently posted on the industrial user's bulletin board or other prominent place advising employees who to call in the event of an accidental or slug discharge. Employers shall ensure that all employees who work in any area where an accidental or slug discharge may occur or originate are advised of the emergency notification procedures.
- (f) *Reports of potential problems—Slug and spills.*
- (1) In the case of any changes at its facility affecting potential for a slug discharge as defined in section 26-602 or any actual discharge, including, but not limited to, spills, accidental discharges, discharges of a nonroutine, episodic nature, a non-customary batch discharge, or a discharge that may cause potential problems for the POTW, the industrial user shall immediately telephone and notify the city of the incident. This notification shall include:
 - (i) Name of the facility.
 - (ii) Location of the facility.
 - (iii) Name of the caller.
 - (iv) Date and time of discharge.
 - (v) Date and time discharge was halted.

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- (vi) Location of the discharge.
 - (vii) Estimated volume of discharge.
 - (viii) Estimated concentration of pollutants in discharge.
 - (ix) Corrective actions taken to halt the discharge.
 - (x) Method of disposal if applicable.
- (2) Within five (5) working days following such discharge, the industrial user shall, unless waived by the city, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, penalties, or other liability which may be imposed pursuant to this article.
- (g) *Reports for non-significant industrial users.* If the city deems it necessary to assure compliance with provisions of this article, any industrial user of the POTW may be required to submit an industrial discharge permit application, questionnaire or other reports and notifications in a format and timeframe as specified by the city.
- (h) *Signatory certification.* All reports and other submittals required to be submitted to the city shall include the following statement and signatory requirements.
- (1) The authorized representative of the industrial user signing any application, questionnaire, any report or other information required to be submitted to the city must sign and attach the following certification statement with each such report or information submitted to the city.
- "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or the persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."
- (2) If the authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section and meeting the definition in section 26-602 must be submitted to the city prior to or together with any reports to be signed by an authorized representative.
- (i) *Compliance schedules.* Should any schedule of compliance be established in accordance with the requirements of this article, the following conditions shall apply to such schedule:
- (1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.);
- (2) No increment referred to above shall exceed nine (9) months;
- (3) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the city including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it

expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the city.

(j) *Change in discharge or operations.*

- (1) Every permitted industrial user shall file a notification with the city a minimum of fourteen (14) days prior to any planned significant change in operations or wastewater characteristics. A significant change shall be a change equal to or greater than twenty (20) percent in the mass of a pollutant or volume of flow discharged to the POTW. In addition, this notification shall include changes to:
 - (i) Adding or removing processing, manufacturing or other production operations.
 - (ii) New pollutants used which may be discharged.
 - (iii) Changes in the listed or characteristic hazardous waste for which the industrial user has submitted or is required to submit information to the city under this article and subsection (k).
- (2) Known or anticipated facility closure. The industrial user is required to notify the city at least thirty (30) days prior to facility shutdown or closure which might alter the character, nature, quality, or volume of its wastewater.

(k) *Notification of the discharge of hazardous waste.*

- (1) Any industrial user shall notify the city, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR Part 261. Such notification to the city shall be made within the appropriate time frames specified in subsections (d), (f) and (j) of this section within twenty-four (24) hours of becoming aware of the discharge, whichever is shorter.

Such notification must include:

- a. The name of the hazardous waste as set forth at 40 CFR Part 261;
 - b. The EPA hazardous waste number;
 - c. The type of discharge (continuous, batch, or other);
 - d. An identification of the hazardous constituents contained in the wastes;
 - e. An estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month;
 - f. An estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months;
 - g. Certification that the industrial user has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical; and
 - h. Signatory certification as required by subsection (h).
- (2) Any industrial user shall notify the EPA Regional Waste Management Division Manager, and state hazardous waste authorities, in writing, of the discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR Part 261 and meets the reporting criteria specified at 40 CFR 403.12(p). Notification to the state and EPA is the responsibility of the industrial user and shall be made as required under 40 CFR Section 403.12(p). The industrial user shall copy the city on all notifications made to the state and EPA.
 - (3) In the case of any new regulation under Section 3001 of the Resource Conservation and Recovery Act (RCRA) identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the industrial user must notify the city, the EPA Regional Waste Management Waste

Division director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

- (4) This provision does not create a right to discharge any substance not otherwise allowed to be discharged by this chapter, a permit issued hereunder, or any applicable federal or state law.

(l) *Requests for information.*

- (1) A permittee shall furnish to the city, within the timeframe set by the administrator, any information which the city may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating an industrial discharge permit, or to determine compliance with the industrial discharge permit or this article. A permittee shall also, upon request, provide to the city, within the timeframe required by the administrator, copies of any records that are required by the industrial discharge permit or this article.
- (2) When requested by the city, any industrial user shall submit information to the administrator regarding industrial processes, nature and characteristics of wastes and wastewaters generated at the industrial facility, method of disposal of wastes, or other information required by the administrator to meet the responsibilities under this article, state law, and 40 CFR Part 403. Failure to provide information within the timeframe specified shall be a violation of this article.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-612. Right of entry.

- (a) Whenever it shall be necessary for the purposes of this article, the city may enter upon any industrial user's facility, property, or premises subject to this article for the purposes of:
- (1) Performing all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by an industrial user. Compliance monitoring and inspection shall be conducted at a frequency as determined by the city and may be announced or unannounced;
- (2) Examining and copying any records required to be kept under the provisions of this article or of any other local, state or federal regulation;
- (3) The city may use a camera to photograph any areas of the facility as deemed necessary for carrying out the duties of the industrial pretreatment program including, but not limited to, documentation of the industrial user's compliance status and for reinforcement of required written reports. The industrial user shall be allowed to review copies of photographs for confidentiality claims;
- (4) Inspecting any monitoring equipment or method, pretreatment system equipment and/or operation;
- (5) Sampling any discharge of wastewater into POTW; and/or
- (6) Inspecting any production, manufacturing, fabricating or storage area where pollutants, regulated under this article, could originate, be stored, or be discharged to the POTW.
- (b) The occupant of such property or premises shall render all proper assistance in such activities. Where an industrial user has security measures in place which require proper identification and clearance before entry into its premises, the industrial user shall make necessary arrangements with its security personnel so that authorized representatives of the city will be permitted to enter without delay to perform their specified functions.
- (c) The administrator is entitled to enter all private properties through which the city or any connecting jurisdiction holds an easement.

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- (d) Failure to allow entry or unreasonable delays. In the event the administrator is refused admission or unreasonably delayed is a violation and may result in enforcement action as allowed for under this article including revocation of the industrial discharge permit.
 - (e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the administrator and shall not be replaced. The costs of clearing such access shall be borne by the user.
 - (f) If the administrator has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this article or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the administrator may seek issuance of a search warrant from a court of competent jurisdiction.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-613. Fees.

- (a) *Purpose.* The purpose of this section is to provide for the payment to the city by industrial users of the POTW of all costs incurred in the implementation and administration of the industrial pretreatment program. The applicable charges and fees shall be set forth in a schedule adopted by the city council.
- (b) *Charges and fees.* The administrator may adopt additional charges and fees relating to the matters covered by this article, including fees for:
 - (1) Processing industrial discharge permit applications.
 - (2) Reimbursement of costs of operating the industrial pretreatment program.
 - (3) Measuring, monitoring, inspection and surveillance procedures, sampling, testing, and analyzing industrial user wastewater.
 - (4) Reviewing and approving accidental discharge procedures and facilities.
 - (5) Fees as the city may deem necessary to carry out the requirements contained herein.
 - (6) Fees to cover the added cost of handling or treating any wastes not covered by existing or regular monthly sewer service charges.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-614. Compliance and enforcement.

- (a) *Enforcement response plan.* The city may adopt policies and procedures as set forth in the city's enforcement response plan for carrying out the provisions of this article, provided that such policies and procedures are not in conflict with this article or any applicable state or federal law or regulation.
- (b) *Publication of industrial users in significant noncompliance.* The city shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the significant industrial users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. In addition, any industrial user found to be in significant noncompliance with subsections (3), (4) or (8) shall also be published in the newspaper. The following criteria shall be used to define significant noncompliance:

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- (1) Chronic violations of wastewater discharge limits, defined as those in which sixty-six (66) percent or more of all of the measurements taken during a six-month period exceed, by any magnitude, a numeric pretreatment standard or requirement, including instantaneous limits;
 - (2) Technical review criteria (TRC) violations, defined as those in which thirty-three (33) percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease and 1.2 for all other pollutants except pH);
 - (3) Any other violation of a pretreatment standard or requirement (daily maximum, long-term average, instantaneous limit, or narrative standard) that the administrator determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of city personnel or the general public;
 - (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or the environment or has resulted in the city's exercise of its emergency authority to halt or prevent such a discharge;
 - (5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction or attaining final compliance;
 - (6) Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports and reports on compliance with compliance schedules;
 - (7) Failure to accurately report noncompliance; or
 - (8) Any other violation or group of violations which may include a violation of best management practices, which the administrator determines may adversely affect the operation or implementation of the local pretreatment program.
- (c) *Administrative enforcement actions.*
- (1) *Notice of violation (NOV).* When the city finds that an industrial user has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the city may serve upon the industrial user a written notice of violation. Within five (5) working days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction or prevention thereof, to include specific required actions, shall be submitted by the industrial user to the city. Submission of such a plan in no way relieves the industrial user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.
 - (2) *Suspension of service.*

Endangerment to health or welfare of the community: The city, through other than a formal notice to the affected industrial user, may immediately and effectively halt or prevent any discharge of pollutants into any natural waterway, surface drainage within the city, any area under jurisdiction of the city, the POTW of the city or any wastewater system tributary thereto, by any means available to them, including physical disconnection from the wastewater system, whenever it reasonably appears that such discharge presents an imminent endangerment to the health or welfare of the community.

Endangerment to environment or treatment works: The city, after written notice to the industrial user may halt or prevent any discharge of pollutants into any natural waterway, surface drainage within the city, any area under jurisdiction of the city, the POTW, wastewater system tributary thereto, by any

means available to them, including physical disconnection from the wastewater system, whenever such discharge presents or may present an endangerment to the environment or threatens to interfere with the operation of the POTW.

Any person notified of a suspension of the wastewater treatment service and/or the industrial discharge permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the city shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to individuals or the environment. The city may reinstate the industrial discharge permit and/or the wastewater treatment service upon proof of the elimination of the non-complying discharge.

A detailed written statement submitted by the industrial user describing the causes of the harmful contribution and the measure taken to prevent any future occurrence shall be provided to the city within five (5) days of the date of occurrence. Suspension of service shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

- (3) *Administrative compliance order.* When the city finds that an industrial user has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the city may issue an order to the industrial user responsible for the discharge directing that the industrial user come into compliance within a specific time. If the industrial user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the POTW. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the industrial user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.
- (4) *Consent order.* The city may enter into a consent order, assurances of compliance, or other similar documents establishing an agreement with any industrial user responsible for noncompliance. Such documents shall include specific actions to be taken by the industrial user to correct the noncompliance within a time period specified by the document. A consent order may include penalties, supplemental environmental projects, or other conditions and requirements as agreed to by the city and the industrial user.
- (5) *Show cause hearing.*
 - (i) The city may order any industrial user who causes or allows an unauthorized discharge to enter the POTW to show cause before the administrator why the proposed enforcement action should not be taken. A notice shall be served on the industrial user specifying the time and place of a hearing to be held by the administrator regarding the violation, the reasons why the proposed action is to be taken, and directing the industrial user to show cause before the administrator why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or be sent by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.
 - (ii) The administrator may conduct the hearing and take the evidence, or may designate one or more persons to conduct the hearing and to take the following actions:
 - (A) Issue subpoenas requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings, The administrator or the

industrial user may petition the municipal court to enforce any subpoena issued pursuant to this section through the court's contempt powers.

- (B) Receive evidence from both the industrial user and the administrator on any relevant issue involved in such hearings, provided however, that the Montana Rules of Evidence shall not apply strictly to such evidence.
 - (C) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the administrator for final action thereon.
- (iii) At any hearing held pursuant to this article, testimony taken must be under oath and recorded. The transcript of testimony will be made available to any member of the public and any party to the hearing upon payment of reasonable charges for the preparation thereof. The hearing may be suspended or continued from time to time in the discretion of the presiding officer, provided that all evidence is received and the hearing is closed within sixty (60) days after it is commenced.
- (iv) After the administrator has reviewed the evidence, they may issue an order of findings and take an action or no action as necessary and appropriate.
- (6) *Cease and desist order.*
- (i) When the administrator finds that an industrial user is violating this article, an industrial discharge permit, any order issued hereunder, or any other pretreatment standard or requirement, or that the industrial user's past compliance history indicates that violations are likely to recur, the administrator may issue an order to the user directing it to cease and desist all such violations and directing the industrial user to:
 - (A) Immediately comply with all requirements;
 - (B) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.
 - (ii) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.
- (7) *Administrative fines.* When the city finds that an industrial user has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the city may fine such industrial user in an amount not to exceed one thousand dollars (\$1,000.00) per day per violation. Such fines shall be assessed on a per-violation, per day basis. In the case of monthly or other long-term average discharge limits, fines may be assessed for each day during the period of violation. Issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the industrial user.
- (d) *Judicial enforcement remedies.*
- (1) *Injunctive relief.* When the city finds that an industrial user has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the city may petition the Billings Municipal Court for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the industrial discharge permit, order, or other requirement imposed by this article on activities of an industrial user. The city may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the industrial user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against an industrial user.
 - (2) *Civil penalties.*

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- (i) An industrial user who has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the city for a maximum civil penalty not to exceed one thousand dollars (\$1,000.00) per day per violation. In the case of a monthly or other long-term average discharge limit, penalties may accrue for each day during the period of violation.
 - (ii) The city may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the city.
 - (iii) In determining the amount of civil liability, the city shall take into account all relevant circumstances including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the industrial user's violation, corrective actions by the industrial user, the compliance history of the industrial user, and any other factor as justice requires.
 - (iv) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against an industrial user.
- (3) *Civil/administrative fine pass through.* In the event that an industrial user discharges such pollutants which cause the city to violate any condition of its MPDES permit and the city is fined by the EPA or the state for such violation, then such industrial user shall be fully liable for the total amount of the fine assessed against the city by the EPA and/or the state.
- (4) *Criminal prosecution.*
- (i) Any industrial user who violates or fails to comply with any provision of this article or with any orders, rules, regulations, permits and permit conditions issued hereunder, shall, upon conviction, be guilty of a misdemeanor. The penalty for such misdemeanor shall be a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months, or both.
 - (ii) Any industrial user who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan or other document filed or required to be maintained pursuant to this article, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under this article, shall, upon conviction, be guilty of a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six (6) months, or both.
 - (iii) The city may refer violations that warrant criminal prosecution to the U.S. Attorney General's Office, State Attorney General or USEPA Criminal Investigation Division or other appropriate agency. Such referral shall not preclude the city from taking a parallel administrative or civil enforcement action.
- (e) *Cost recovery.* In any judicial action, the city may recover reasonable attorney fees, court costs, deposition and delivery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation if the city prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this article or the rules and regulations shall become liable to the city for any expense, loss, or damage to the city or to the POTW occasioned by such violation including, but not limited to, investigative/monitoring expenses, fines, penalties, cleaning, repair or replacement work caused by and in connection with the violation. In addition, upon proof of willful or intentional meter bypassing, meter tampering, or unauthorized metering, the city shall be entitled to recover as damages three (3) times the amount of actual damages.
- (f) *Remedies nonexclusive.* The remedies provided for in this article are not exclusive of any other remedies that the city may have under the provisions of state law.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-615. Pretreatment authority outside of city.

In order to achieve and maintain compliance with the Clean Water Act, federal pretreatment requirements, state regulations, sewage grant conditions and MPDES discharge permit requirements, the city, as manager/operator shall have the authority to implement and enforce the pretreatment program against any industrial user within and outside of the city's territorial jurisdiction who discharges directly or indirectly to the POTW or any collection system connected to the city POTW.

To that end, all governmental sewage connectors, municipalities and sanitation districts, shall be required to adopt a regulatory pretreatment program either:

- (1) Is consistent with and as stringent with this article and the rules and regulations; or
- (2) Incorporates by reference the provisions of this article and the rules and regulations and specifically delegates authority to implement and enforce the pretreatment program to the city.

Connectors, municipalities, sanitation districts, shall also be required to approve necessary revisions to existing sewer service agreements or joint agreements granting the city the right to administer and physically enforce the connector's pretreatment program on behalf of and as agent for the connector district.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-616. Affirmative defenses to discharge violations.

(a) *Upset.*

- (1) For the purposes of this article, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- (2) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (3) below are met.
- (3) An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (i) An upset occurred and the industrial user can identify the cause(s) of the upset;
 - (ii) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
 - (iii) The industrial user has submitted the following information to the city within twenty-four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
 - (A) A description of the indirect discharge and cause of noncompliance;
 - (B) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - (C) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

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- (4) In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have burden of proof.
 - (5) Industrial users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
 - (6) Industrial users shall control (decrease) production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.
- (b) *Prohibited discharge standards.* An industrial user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the specific prohibitions in any action brought against it alleging a violation of the specific prohibitions in subsections 26-604(b)(3), (4), (5), (6) or (7) where the user demonstrates that:
- (1) It did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference; and
 - (2) The industrial user had accurately disclosed the concentration of the pollutant(s) causing the pass through or interference in applications, reports, or other required documents as required; and either:
 - (i) A local limit designed to prevent pass through and/or interference, as the case may be was developed for each pollutant in the industrial user's discharge that caused pass through or interference, and the industrial user was in compliance with each such local limit directly prior to and during the pass through or interference; or
 - (ii) If a local limit designed to prevent pass through and/or interference, as the case may be, has not been developed for the pollutant(s) that caused the pass through or interference, the industrial user's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's MPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.
- (c) *Bypass.*
- (1) For purposes of this subsection:
 - (i) Bypass means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.
 - (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
 - (2) Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (3) and (4) of this section but are reportable under subsections 26-611(a), (d), (f), (j) and (k), as appropriate.
 - (3) Notice.
 - (i) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the director, if possible, at least ten (10) days before the date of the bypass.

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- (ii) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the administrator within twenty four (24) hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The administrator may waive the written report on a case-by-case basis if the oral report has been received within twenty four (24) hours.
- (4) Prohibition of bypass.
- (i) Bypass is prohibited, and the administrator may take enforcement action against an industrial user for a bypass, unless:
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (C) The industrial user submitted notices as required under subsection (3) of this section.
 - (ii) The administrator may approve an anticipated bypass, after considering its adverse effects, if the administrator determines that it will meet the three (3) conditions listed in subsection (4)(i) of this section.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

Sec. 26-617. Severability; repealer; effective date.

- (a) *Severability.* If any part or parts of this article are held by any court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of said article.
- (b) *Repealer.* That all ordinances or parts of ordinances in conflict herewith are hereby repealed.
- (c) *Effective date.* That this article [Ordinance Number 13-5600] shall be effective from and after final passage and as provided by law.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

ARTICLE 26-700. IRRIGATION DITCHES⁴

⁴Editor's note(s)—Art. 26-700 derives from Ch. 10.80 of the 1967 Code of Billings, Montana. Said chapter has been included herein as a new article at the discretion of the editor.

Sec. 26-701. Definitions.

For the purpose of this article the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

- (1) *Shall* is mandatory and not merely directory.
- (2) *City* is the City of Billings, Montana.
- (3) *Irrigation ditch* is the total area occupied by the ditch, its banks concomitant structures, rights-of-way and easements, and includes all ditches, flumes, culverts or pipe used to transport water for irrigation purposes.
- (4) *Person* is any person, firm, partnership, association, organization, corporation, company, or entity of any nature.
- (5) *Public places* shall include all lands owned by the city.
- (6) *Public nuisance* means any dangerous or potentially dangerous condition, litter or debris condition arising or occurring by reason of an irrigation ditch passing through or existing within the city.
- (7) *City administrator* means the duly employed and acting chief executive of the city.
- (8) *Council* means the duly elected and qualified legislative body of the city.
- (9) *Costs and expenses* shall include the actual costs and expenses incurred and an allocable portion of administration costs incurred in processing the corrective action and collecting the amount due.

(Ord. No. 81-4343, § 1, 4-27-81)

Sec. 26-702. Not used.

Sec. 26-703. Care and maintenance of irrigation ditches.

Every person owning or operating any irrigation ditch or system or portion thereof within the city shall care for, maintain and control said irrigation ditch, system, water being transported and concomitant structures. Said care control and maintenance shall also apply with respect to interactions and reactions to structures and impediments not controlled or maintained by persons owning or operating the irrigation systems. The duty imposed hereby shall extend to control and removal of all obstructions, litter, debris, plant material, loose earth, rocks, stones, concrete and wood material without limitation in, on, or around said irrigation ditches.

(Ord. No. 81-4343, § 1, 4-27-81)

Sec. 26-704. Nuisance.

Failure to care for and maintain said ditches as provided in section 26-703 shall constitute a public nuisance and may be punished as a violation of this chapter.

(Ord. No. 81-4343, § 1, 4-27-81)

Sec. 26-705. City action, dangerous condition.

In the event the public works director or his designee determines that a danger to the public or public or private property exists and is imminent the city shall attempt to notify the responsible persons. If they cannot be immediately located or if located and refuse or are unwilling to take the necessary action and the danger is such that immediate action must be taken, the city may take action to cure the problem and charge the cost and expense thereof to the owner or operator of the irrigation ditch or system. The determination to be made herein shall be at the sole discretion of the city.

(Ord. No. 81-4343, § 1, 4-27-81)

Sec. 26-706. City action, problem condition.

In the event a problem condition exists but is not dangerous as defined in section 26-705, notice of the condition shall be given to the owner or operator of the irrigation ditch or system and the owner or operator shall be allowed ten (10) days in which to cure the condition. In the event an extension of time is necessary to accomplish the cure, application may be made to the city administrator and the administrator may extend the time period to cure not to exceed an additional thirty (30) days. Upon failure of the owner or operator to cure the problem condition within the time allowed or to apply for an extension the city may cure the problem and charge the cost and expenses therefore against the owners or operators of the irrigation ditch or system.

(Ord. No. 81-4343, § 1, 4-27-81)

Sec. 26-707. Notice.

The notice provided in section 26-706 shall be by certified mail return receipt requested or by personal service on the owner, operator, employee or agent.

(Ord. No. 81-4343, § 1, 4-27-81)

Sec. 26-708. Lien.

The costs and expenses incurred by the city shall be documented and provided to the city clerk together with a legal description of the property upon which the city performed the service. The clerk shall cause a lien in a form similar to a mechanics lien to be filed with the clerk and recorder of Yellowstone County. The city may take action to collect the expenses and costs incurred either by foreclosure of the lien or by direct action against the persons owning or operating the irrigation ditches or systems. The provisions of this paragraph are in addition to and cumulative to all other penalties that may be imposed for violations of this chapter.

(Ord. No. 81-4343, § 1, 4-27-81)

Sec. 26-709. Penalty for violation.

Unless another penalty is expressly provided by law, every person convicted of a violation of this chapter shall be punished as provided by section 1-110.

(Ord. No. 81-4343, § 1, 4-27-81)

ARTICLE 26-800. DENTAL AMALGAM

Sec. 26-801. Definitions.

- (a) *Dental amalgam.* Dental amalgam is a liquid mercury and metal alloy mixture used in dentistry to fill cavities caused by tooth decay. Low-copper dental amalgam commonly consists of mercury, silver, tin, zinc, and other trace metals.
- (b) *Existing dental amalgam source.* All dental facilities or offices that were discharging dental amalgam prior to July 14, 2017 to the city. Existing sources must have been in compliance with the standards by July 14, 2020 and must have submitted a one-time certified compliance report by October 12, 2020 to the city. In the event that ownership is transferred, a new one-time certified compliance report must be submitted by the new owner within ninety (90) days of the transfer to the city.
- (c) *New dental amalgam source.* All dental facilities or offices that discharged dental amalgam after July 14, 2017 to the city. New sources also include any ownership transfer of an existing dental facility or office after July 15, 2020. All new sources must be in compliance with the waste management practices and record retention requirements set forth in this article and must submit a one-time certified compliance report to the city within ninety (90) days after the first discharge to the city or within ninety (90) days of any ownership transfer by the new owner.

(Ord. No. 21-5749 , § 1, 2-22-21)

Sec. 26-802. Dental amalgam mercury reduction.

- (a) This article applies to all owners or operators of dental facilities or offices that remove, repair or place dental amalgam fillings. Owners and operators of dental facilities or offices that do not place or remove dental amalgam except in limited emergency, unplanned or unanticipated circumstances need only to submit the one-time compliance form by the dates set forth in section 26-801 subsections (b) and (c). If work in a dental office is limited to work that does not involve placing or removing dental amalgam, such as oral pathology, orthodontics, periodontics, oral and maxillofacial surgery/radiology, endodontics, or prosthodontics, then this article does not apply.
- (b) All owners and operators of dental facilities or offices shall implement the basic requirements for dental amalgam management established by the United States Environmental Protection Agency Dental Office Point Source Category 40 CFR Part 441, and set forth in section 26-803, BMCC.

(Ord. No. 21-5749 , § 1, 2-22-21)

Sec. 26-803. Waste management practices.

All owners and operators of dental facilities or offices that remove, repair or place dental amalgam fillings shall comply with the following waste management practices:

- (a) Operate and maintain an amalgam separator that meets the criteria of 40 CFR 441.30, 441.40, and ISO 11143 according to the manufacturer's instructions. The amalgam separator shall have a design and capacity appropriate for the size and type of vacuum system.
- (b) Do not discharge any dental amalgam to a publicly owned treatment works (as defined in section 26-602). Waste must be collected in the separator and a separate amalgam waste bucket which will be hauled offsite as dental amalgam waste.
- (c) Lines must not be cleaned with oxidizing or acidic cleaners including but not limited to bleach, chlorine, iodine, and peroxide. Cleaners must have a pH between six (6) and eight (8).

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- (d) Adhere to all compliance reporting requirements listed in section 26-804.
 - (e) Complete and submit the city-provided compliance report forms for reporting the required information in section 26-804.
 - (f) If a malfunction with the amalgam separator is discovered, this malfunction must be documented and repaired or replaced within ten (10) business days.

(Ord. No. 21-5749 , § 1, 2-22-21)

Sec. 26-804. Record retention.

- (a) The manufacturer's user manual must be retained for the life of the amalgam separator, be posted near the amalgam separator, and be made available for review during all city inspections.
- (b) Amalgam separator logs including logged inspections, routine maintenance, and repairs must be posted near the amalgam separator and retained for a period of at least three (3) years from the present date and be made available for review during all city inspections. The amalgam separator must be inspected according to the user manual to ensure proper operation and maintenance; this inspection must be documented on the amalgam separator log.
- (c) Certificates verifying the proper disposal and recycling of dental amalgam waste buckets and containers from the amalgam separators must be retained for a minimum period of three (3) years from the present date and be made available for review during all city inspections.

(Ord. No. 21-5749 , § 1, 2-22-21)

Sec. 26-805. Compliance.

- (a) The owners or operators of dental facilities or offices shall allow the city to inspect the amalgam separator, amalgam waste storage areas and all above listed compliance reports, logs, and records. Inspection shall occur during the normal operations schedule of the dental facility or office. The city shall inspect dental facilities or offices according to appointments made in advance if this advanced notice does not impede enforcement of this article.
- (b) Any violation of this article may be considered a failure to comply with applicable federal standards and requirements and may constitute a violation of the Clean Water Act, and may also subject the owner or operator of a dental facility or office to the compliance and enforcement provisions set forth in section 26-614.

(Ord. No. 21-5749 , § 1, 2-22-21)