

**CHAPTER 65-5**

**ABOVEGROUND STORAGE TANK REGULATIONS**

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Chapter Authority: 1 CMC §§ 2646-2649; 1 CMC § 2650; 2 CMC §§ 3101-3135.

Chapter History: Corrected 27 Com. Reg. 24994 (Sept. 22, 2005); Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: PL 3-23 (effective Oct. 8, 1982), the “Commonwealth Environmental Protection Act,” codified as amended at 1 CMC §§ 2646-2649 and 2 CMC §§ 3101-3135, created the Division of Environmental Quality (DEQ) within the Department of Public Health and Environmental Services. See 1 CMC § 2646. The act authorized the Chief (now the Director) of the Division to administer, implement and enforce specific powers and duties relating to environmental protection and to develop rules and regulations to implement PL 3-23 and other laws administered by the Division. See 1 CMC §§ 2647 and 2648. PL 3-23 § 7, 2 CMC § 3121, granted the Director of the Department of Public Health and Environmental Services the exclusive power to issue regulations pursuant to the act.

Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. According to Executive Order 94-3 § 304(d):

Section 304. Department of Public Works.

...

(d) Environmental Quality. The Division of Environmental Quality is transferred from the Department of Public Health to the Department of Public Works. To the maximum extent practicable, the Secretary of Public Works shall integrate land-based earth moving permits into the building permit process.

The full text of Executive Order 94-3 is set forth in the commission comment to 1 CMC § 2001. PL 11-108 (effective Dec. 3, 1999) repealed Executive Order 94-3 § 304(d) in its entirety. See PL 11-108 § 2. PL 11-108 “reclassified [the Division of Environmental Quality] as an independent regulatory agency, acting from within the office of the Governor” and placed all administrative duties and authority with regards to DEQ with the Governor or his designee. PL 11-108 §§ 1 and 3, codified at 1 CMC § 2650.

Executive Order No. 2013-24, promulgated at 35 Com. Reg. 34596 (Nov. 28, 2013), established a new Bureau of Environmental and Coastal Quality. This Order reorganized the Division of Environmental Quality as a division of the Bureau of Environmental and Coastal Quality, and provided that “all rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Executive Order shall continue to be effective until revised, amended, repealed or terminated.”

### **Part 001 - General Provisions**

#### **§ 65-5-001 Authority and Scope**

The Division of Environmental Quality is responsible for protecting, preserving and enhancing the environmental quality of water, air, and land of the Commonwealth. The Aboveground Storage Tank (AST) Regulations in this chapter are intended to address potential sources of pollution that may result from AST systems. To ensure the prevention and early detection of any release of a regulated substance, new and existing AST systems are required to meet acceptable design and installation criteria. These regulations are promulgated by the Division of Environmental Quality pursuant to the

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Commonwealth Environmental Protection Act (CEPA), 1982, 2 CMC §§ 3101 to 3134, Public Law 3-23; and the Commonwealth Environmental Amendments Act (CEAA), 1999, Public Law 11-103. These regulations and technical provisions shall have the force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of the Commonwealth of the Northern Mariana Islands.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### § 65-5-005 Applicability

(a) The regulations in this chapter shall apply to all new AST systems which store regulated substances in excess of 500 gallons with the exception of those AST systems excluded under subsection (d).

(b) All AST systems in existence in the CNMI at the effective date of these regulations which store regulated substances in excess of 500 gallons shall comply with § 65-5-435(b), § 65-5-440, § 65-5-520, and § 65-5-525 of this chapter with the exception of those AST systems excluded under subsection (d).

(c) All AST systems in existence in the CNMI at the effective date of the regulations in this chapter shall be upgraded to meet the requirements of these regulations when the AST system is repaired, reconstructed, relocated, replaced, or at any time as determined by the Director of DEQ to be necessary to protect human health and the environment.

(d) The following AST systems shall be exempt from the requirements of the regulations in this chapter:

(1) Bulk plants or terminals that are regulated under the Clean Water Act and Spill Prevention and Countermeasure Plan (SPCC) requirements.

(2) An AST system which has been permanently closed and is in compliance with all the requirements of § 65-5-525 of this chapter.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### § 65-5-010 Prohibitions

(a) No storage tank that was originally designed for use as an underground storage tank may be used as an AST.

(b) No single-walled fiberglass reinforced plastic (FRP) tank shall be allowed for use as an AST for the storage of flammable or combustible liquids. ASTs that have an outer wall of concrete and/or steel and an inner lining of FRP are allowable.

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(c) No tank that has been constructed of plastic (e.g. polyethylene, polypropylene, polyvinylchloride (PVC), and acrylonitrile butadiene styrene polymers (ABS)) shall be allowed for use as an AST for the storage of flammable or combustible liquids.

Modified, 1 CMC § 3806(g).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: In subsection (c), the Commission inserted the closing parenthesis after “(ABS)” to correct a manifest error.

### § 65-5-015 Definitions

(a) “Aboveground storage tank” or “AST” means any tank or combination of tanks, that is used to contain regulated substances and is not an underground storage tank (UST) under CNMI Revised Underground Storage Tank Regulations [NMIAC chapter 65-100].

(b) “Aboveground storage tank system” means any aboveground storage tank, connected piping, ancillary equipment, and spill containment system.

(c) “Act” shall mean for the purpose of the regulations in this chapter unless otherwise specified the Commonwealth Environmental Protection Act (CEPA), 1982, 2 CMC §§ 3101 to 3134, Public Law 3-23; and the Commonwealth Environmental Amendments Act (CEAA), 1999, Public Law 11-103.

(d) “Ancillary equipment” means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an aboveground storage tank.

(e) “Bulk plant or terminal” means the portion of a property where regulated substances are received by tank vessel, pipelines, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such regulated substances by tank vessel, pipeline, tank car, tank vehicle, portable tank, or container.

(f) “Cathodic protection” means the technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell through the application of galvanic anodes or impressed current.

(g) “Commonwealth” or “CNMI” means the Commonwealth of the Northern Mariana Islands.

(h) “Compatible” means the ability of two or more substances or materials in a AST system to maintain their respective physical and chemical properties upon contact with one another.

(i) “Corrosion” means the degradation of metals due to chemical reactions with their environment. In steel, this is commonly known as “rust.”

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- (j) “Corrosion expert” means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal ASTs. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal ASTs.
- (k) “Dialectical material” means a material that does not conduct direct electrical current.
- (l) “Dike” means an embankment, ridge, or wall which is impermeable to stored regulated substances and which forms the perimeter of a secondary containment or spill containment area.
- (m) “Director” means the Director of the Division of Environmental Quality.
- (n) “Double-walled AST” means an aboveground storage tank with an inner primary shell and an outer secondary shell, which extends around the entire inner shell and a method in place for monitoring the interstitial space between the shells for leaks.
- (o) “DEQ” means the Division of Environmental Quality.
- (p) “Facility” means the location or property where the AST system is or was installed and operating.
- (q) “Free product” refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in groundwater).
- (r) “Inland water” shall mean surface fresh waters, such as streams or springs, that are not subject to the ebb and flow of the tide.
- (s) “Maintenance” means the normal operational upkeep to prevent an aboveground storage tank system from releasing regulated substances.
- (t) “New AST” means any AST or part of an AST system installed or reactivated on or after the effective date of the regulations in this chapter and is required to comply with the provisions of these regulations.
- (u) “Operator” means any person in control of, or having responsibility for, the daily operation of the AST system.
- (v) “Owner” means:
- (1) In the case of an AST system in use as of the effective date of this section, or brought into use after that date, any person who owns an AST system used for storage, use, or dispensing of regulated substances; or

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(2) In the case of any AST system in use before the effective date of this section, but no longer in use on that date, any person who owned the AST system immediately before the discontinuation of its use, and the title holder of the property where the AST system is located.

(w) “Overfill release” means a release that occurs when an AST is filled beyond its capacity, resulting in a discharge of regulated substances.

(x) “Person” means any individual, firm, partnership, association, corporation, or entity or agency of the CNMI or the United States of America.

(y) “Pipe” or “piping” or “pipeline” means a hollow cylinder or tubular conduit that is constructed of non-earthen materials for the purpose of transferring a regulated substance.

(z) “Regulated substance” means:

(1) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA - 42 U.S.C. § 9601(14)) but not including any substances regulated as hazardous waste under RCRA subtitle C; or

(2) Petroleum, including crude oil, or fraction thereof, that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds of pressure per square inch absolute). The term regulated substance includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(aa) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an AST system.

(bb) “Release detection” means determining whether a release of a regulated substance has occurred from the AST system or into the interstitial space between the AST system and the secondary barrier or secondary containment around it.

(cc) “Repair” means any work necessary to maintain or restore an AST system to a condition suitable for safe operation, other than that necessary for ordinary, day-to-day maintenance to maintain the functional integrity of the AST system and that does not weaken the AST system.

(dd) “Shop-built tank” or “shop-fabricated tank” means an aboveground storage tank that is constructed at a AST manufacturer’s plant and transported to a facility for installation.

(ee) “Spill containment area” is a structure which is intended to contain any release of a regulated substance resulting from a spill, leak, or rupture of the AST.

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(ff) “Tank” means a stationary device designed to contain an accumulation of regulated substances, constructed of non-earthen materials (e.g., concrete, steel, plastic), and all associated structural supports.

(gg) “Wetlands” means those areas that are inundated or saturated by surface water or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### **Part 100 - Permitting**

#### **§ 65-5-101 AST Permit to Install Application**

Prior to installation of any AST system, the owner or operator shall apply for and obtain an AST permit to install from DEQ. The AST permit to install application shall be completed in full, signed by the owner or operator submitting the application, and be submitted to DEQ with a copy of the design blue prints and vicinity map.

(a) The owner or operator shall pay an AST permit to install application fee of five hundred dollars per tank payable to the CNMI Treasurer, at the time the AST permit to install application is submitted.

(b) DEQ shall notify the applicant if any additional information is needed within fifteen working days from the date the application is submitted to DEQ. An AST permit to install application will not be considered complete until DEQ has received the additional information requested.

(c) DEQ shall not issue an AST permit to install until the owner, operator, or designated contractor has obtained a DEQ earthmoving and erosion control permit.

(d) There will be a maximum thirty calendar day processing period for any AST permit to install application from the time that DEQ determines the application is complete.

(e) The DEQ has the right to reject or deny an AST permit to install application that does not comply with all requirements as specified in the regulations in this chapter, or as the Director may deem necessary to protect public health or the environment.

(f) All AST permits to install shall be non-transferable from person to person, and from location to location.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

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Commission Comment: The Commission created the section titles in this part.

### **§ 65-5-105 AST Permit to Operate Application**

The owner or operator of the AST system shall apply for and obtain an AST permit to operate from DEQ prior to commencing the operation of all newly installed AST systems or within one year of the effective date of the regulations in this chapter for any AST system existing prior to the effective date of these regulations. An AST permit to operate must be renewed every five years from the date of issuance under these regulations.

- (a) The AST permit to operate application shall be completed in full, signed by the owner or operator of the AST system, and submitted to DEQ.
- (b) The owner or operator shall pay an AST permit to operate application fee of one hundred dollars per tank.
- (c) There will be a maximum thirty calendar day processing period for any AST permit to operate application from the time DEQ determines the application is complete.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### **§ 65-5-110 Rejection or Revocation of Permit to Operate**

The DEQ has the right to reject or deny any AST permit to operate application and revoke any AST permit to operate if DEQ finds that the AST system is:

- (a) Not constructed in accordance with nationally recognized codes and standards or of materials that are not chemically compatible with the regulated substance stored in the AST system; or
- (b) Operated in a manner that threatens human health or the environment.

Modified, 1 CMC § 3806(f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### **§ 65-5-115 Prohibition on Use of Unpermitted AST**

If DEQ should revoke an AST permit to operate, the placement of regulated substances in the subject AST system is prohibited.

Modified, 1 CMC § 3806(f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### **§ 65-5-120 Implementation of § 65-5-520 Required**

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If DEQ should revoke an AST permit to operate, the owner or operator shall implement § 65-5-520 of this chapter (Temporarily Out-of-service AST Systems).

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

**Part 200 - Aboveground Storage Tank Location Requirements**

**Subpart A - Groundwater Management Zones (from Part 2000 of the CNMI Well Drilling and Well Operations Regulations as amended [NMIAC chapter 65-140])**

**§ 65-5-201 Island of Saipan Class I Groundwater Management Zone AST System Restrictions**

- (a) No new single AST or combined volume of multiple ASTs at one facility exceeding 1,320 gallons shall be permitted.
- (b) Replacement of AST systems in existence and operation at the effective date of this part may be permitted provided they are in compliance with subsection (c) and:
  - (1) USTs are replaced by similar or smaller sized ASTs; or
  - (2) Existing ASTs may be replaced in kind.
- (c) Minimum down gradient and up gradient AST system setback requirements from existing public and private drinking water wells:

	<u>Wellhead</u>	<u>Setback</u>
	<u>Requirement</u>	
(1) Boundary of AST facility	<u>Up gradient</u>	<u>Down gradient</u>
Double-walled AST	400 feet	200 feet
Single-walled AST	500 feet	500 feet

- (2) If the groundwater gradient cannot be reasonably estimated, then the AST system facility setback requirement shall be 300 feet for double-walled ASTs and 500 feet for single-walled ASTs.
- (3) Down gradient and up gradient AST system facility setback requirements for seawater wells and wells undergoing reverse osmosis treatment may be reduced as allowed under § 65-140-1105 and § 65-140-1205 of the CNMI Well Drilling and Well Operations Regulations as amended [NMIAC chapter 65-140].

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

**§ 65-5-205 Island of Saipan Class II and III Groundwater Management Zone Restrictions (Also Applicable to All Other Islands of the CNMI)**

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Minimum down gradient and up gradient AST system setback requirements from existing public and private drinking water wells:

	<u>Wellhead Requirement</u>	<u>Setback</u>
(a) Boundary of AST facility	<u>Up gradient</u>	<u>Down gradient</u>
Double-walled AST	400 feet	200 feet
Single-walled AST	500 feet	500 feet

(b) If the groundwater gradient cannot be reasonably estimated, then the AST system facility setback requirement shall be 300 feet for double-walled ASTs and 500 feet for single-walled ASTs.

(c) Down gradient and up gradient AST system facility setback requirements for seawater wells and wells undergoing reverse osmosis treatment may be reduced as allowed under § 65-140-1105 and § 65-140-1205 of the CNMI Well Drilling and Well Operations Regulations [NMIAC chapter 65-140].

Modified, 1 CMC § 3806(c), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

**§ 65-5-210 Prohibited Locations**

No AST systems shall be installed after the effective date of the regulations in this chapter in the following locations:

- (a)(1) Within a wetland or within five hundred feet of a wetland boundary;
- (2) Within five hundred feet of inland waters;
- (3) Within five hundred feet of the shoreline (as measured from the mean high water mark);
- (4) Within tidal or storm water inundation areas.

(b) The Director of DEQ may, on a site specific basis, waive the requirements of subsection (a) if it can be demonstrated to the Director’s satisfaction that such a waiver will not adversely impact human health or the environment. An application for such a waiver must be supported in writing by the owner or operator with the following information:

- (1) The unique or particular conditions which make compliance with subsection (a) unfeasible (increased project cost in order to obtain compliance with the regulations in this chapter may not be considered the sole reason for unfeasibility);
- (2) The project design shall meet the requirements of part 300, part 400 and § 65-5-501 through § 65-5-515 of this chapter, and provide additional measures beyond part 300, part 400 and § 65-5-501 through § 65-5-515 to ensure adequate protection of those locations listed in subsection (a). Such measures may include but are not limited to: facility design (e.g., site drainage control and oil water separators); AST system design (e.g., audible release alarm); compliance monitoring (e.g., daily versus monthly check of AST system) and complete facility release containment.

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(3) When granting a waiver to the requirements in subsection (a), the Director of DEQ may impose additional conditions necessary to assure adequate protection of human health and the environment.

Modified, 1 CMC § 3806(a), (c), (d), (e).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: The Commission created the section title. The Commission designated subsection (a) where it was absent.

### **§ 65-5-215 Setback Requirements**

Each AST system installation shall conform with the setback requirements with respect to property lines, public ways, and buildings as specified in National Fire Protection Association Code 30 (Flammable and Combustible Liquids Code) and 30A (Automobile and Marine Service Station Code).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: The Commission created the section title.

## **Part 300 - Aboveground Storage Tank System Standards**

### **§ 65-5-301 Application of Standards and Requirements**

The standards and requirements established in the regulations in this chapter shall be applied through the use of codes of practice developed by nationally recognized associations such as, but not limited to, those referenced below and through the use of manufacturer's specifications and sound engineering practices.

Modified, 1 CMC § 3806(d).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: The Commission created the section titles in this part.

### **§ 65-5-305 Nationally Recognized Associations**

Nationally recognized associations which are referenced throughout this chapter are as follows:

- (a) American Concrete Institute (ACI)
- (b) American National Standards Institute (ANSI)
- (c) American Petroleum Institute (API)
- (d) American Society of Mechanical Engineers (ASME)

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- (e) American Society for Nondestructive Testing (ASNT)
- (f) American Society for Testing and Materials (ASTM)
- (g) National Association of Corrosion Engineers (NACE)
- (h) National Fire Protection Association (NFPA)
- (i) Petroleum Equipment Institute (PEI)
- (j) Steel Structures Painting Council (SSPC)
- (k) Steel Tank Institute (STI)
- (l) Underwriters Laboratory (UL).

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: The Commission inserted the final period in subsection (l).

### **§ 65-5-310 Use of Latest Edition**

Nationally recognized codes and standards shall be used in conjunction with manufacturer's specifications. When used to meet the technical standards and requirements of the regulations in this chapter, the most current or latest edition of the codes and standards shall be applied. Other nationally recognized codes and standards, not referenced in this part, may be used to show compliance with these regulations, when appropriate.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### **§ 65-5-315 Upgrade of Nationally Recognized Codes and Standards**

When nationally recognized codes and standards are updated, AST systems installed in conformance with previously existing standards will not automatically be required to be upgraded to meet the new standard.

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### **§ 65-5-320 Industry Recognized Materials**

All new ASTs shall be constructed of industry recognized materials that are chemically and physically compatible with the regulated substance that is to be stored in the AST.

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Modified, 1 CMC § 3806(g).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: The Commission inserted the word “that” to correct a manifest error.

### **§ 65-5-325 New Ancillary Equipment**

All new ancillary equipment for the ASTs (pipes, valves, fittings, pumps, etc.) shall be constructed of industry recognized materials that are chemically and physically compatible with the regulated substance stored in the AST.

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### **§ 65-5-330 Corrosion and Deterioration Protection**

All new AST systems shall be protected from corrosion and deterioration as specified at § 65-5-415 and § 65-5-430 of this chapter.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### **§ 65-5-335 Leak Monitoring System**

All new AST systems shall have a leak monitoring system as specified in § 65-5-435 of this chapter.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### **§ 65-5-340 Release and Overfill Prevention Systems**

All new AST systems shall have release and overfill prevention systems as required in §§ 65-5-405, 65-5-420, and 65-5-425.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### **§ 65-5-345 Testing of New AST Systems**

All new AST systems shall be tested according to industry standards before being placed into service as specified in § 65-5-401.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

## **Part 400 - Specific Requirements for Aboveground Storage Tanks**

**§ 65-5-401 Aboveground Storage Tank Tightness Testing**

(a) All new ASTs shall be tested for tightness in accordance with manufacturer's specifications and current codes of practice developed by nationally recognized associations, except for manufactured, shop built tanks that meet the requirements of subsection (b). The tightness testing shall be completed as part of the installation process, witnessed by DEQ, before an AST permit to operate is issued.

(b) Manufactured, shop built tanks that are tightness tested after full assembly at the plant do not require additional tightness testing at installation if the manufacturer certifies that the tank was tightness tested at the plant and the manufacturer's installation instructions do not require additional tightness testing.

(c) Any AST that receives major modifications to the tank shell, tank bottom, or are relocated shall be tested for tightness in accordance with current codes of practice developed by nationally recognized associations or manufacturer's specifications prior to being returned to service.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

**§ 65-5-405 Spill Containment Requirements for Aboveground Storage Tanks**

(a) Each AST system shall include a concrete pad designed to adequately support the tank and necessary ancillary equipment.

(1) The concrete in each pad should be mixed to provide sufficient bearing capacity and to provide water tightness to prevent migration of any regulated substance release to the underlying soils. Each pad shall be either seamless or have sealed joints to prevent the migration of any regulated substance release to soil.

(2) If the owner or operator chooses the option of sealing the joints, the material used must be:

- (i) An industry recognized standard method and product; and
- (ii) Chemically compatible with the regulated substance that is to be stored in the AST system; and
- (iii) Be resistant to environmental degradation.

(b) Each AST pad shall be equipped with a spill containment dike or dike which will contain any regulated substance release.

(1) Single Wall ASTs: For all single wall ASTs, the spill containment dike shall be designed to hold at least 110% of the tank maximum design capacity and have a minimum two inch freeboard. In all cases, the minimum allowed dike height, including two inch freeboard, shall be eight inches. The containment dikes are to be either:

- (i) Seamless, or
- (ii) Have sealed seams. Any material used to seal containment dikes must also be compatible with the regulated substances stored in the AST system and be resistant to environmental degradation.

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- (2) Double Wall ASTs:
  - (i) For double-walled ASTs, containment dikes are to be a minimum of eight inches in height.
  - (ii) Double-walled AST containment dikes shall be either seamless or have sealed seams.
- (3) Storm water shall be removed from the spill containment area prior to the capacity of containment being reduced by 10 percent.
  - (i) If gravity drains are used, the drain valves shall be secured in the closed position when not in use.
  - (ii) Discharge or disposal of substances from the spill containment structure shall comply with applicable CNMI and federal requirements.
- (c) Any new AST system shall demonstrate compliance with this section at installation. Any AST system existing prior to the effective date of the regulations in this chapter shall demonstrate compliance with this section upon completion of reconstruction or relocation of the AST system or when the tank floor is replaced.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### **§ 65-5-410 Releases to Spill Containment Areas**

An owner or operator shall immediately investigate any release of a regulated substance to a spill containment area.

- (a) The owner operator shall keep a written log of all releases which have occurred in the past three years into spill containment areas which exceed twenty five gallons of regulated substance. The log shall include the following information:
  - (1) Date of the release; and
  - (2) Type and amount of regulated substance released; and
  - (3) Description of cleanup procedure and disposal of released regulated substance.
- (b) The owner or operator shall assess the spill containment area for any damage upon any release of twenty five gallons or more of a stored substance. The owner or operator shall repair the spill containment area, as necessary, prior to continued regulated substance storage.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### **§ 65-5-415 Corrosion Protection for Aboveground Storage Tanks**

All AST system components susceptible to corrosion must have some method of corrosion protection. Methods include:

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- (a)(1) Elevation of the AST so that the underside of the tank floor is not in contact with any surface other than the tank supports.
- (2) Tank supports or foundations must be designed and constructed to minimize the possibility of uneven setting of the tank and to minimize the corrosion to any part of the tank resting on the foundation.
- (b) Coating the tank exterior with corrosion resistant materials.
- (c) Coating or lining the tank interior with corrosion resistant materials. The coating or lining system shall be designed in accordance with current codes of practice such as API 652 or associations such as NACE.
- (d) Cathodically protecting the tank by one or more of the following methods:
- (1) Sacrificial anodes and dialectical coating; or
  - (2) Impressed current; or
  - (3) Another method in an appropriate nationally recognized association code or practice such as API 651 or associations such as NACE.
- (e) Cathodic protection systems shall be designed by a corrosion expert and maintained to provide protection against external corrosion for the operational life of the AST system.
- (f) Each cathodic protection system shall have an access point which enables the owner or operator to check the adequacy of the cathodic protection. The cathodic protection systems shall be monitored periodically as determined by the corrosion system design.
- (g) Tank and pipe connections, of two dissimilar metals, which create a galvanic cell are prohibited.

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: The original paragraphs of subsection (a) were not designated. The Commission designated subsections (a)(1) and (a)(2).

### **§ 65-5-420 Overfill Protection for Aboveground Storage Tanks**

An AST must have one of the following methods for overfill protection:

- (a) A high-level alarm, set at no greater than 90 percent of the tank's capacity, that is visible or audible to the person controlling the substance transfer;
- (b) A system that automatically shuts off the flow of regulated substance into the tank, set at no greater than 95 percent of the AST's capacity;

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(c) A permanently mounted sight glass or gauge, visible to the person controlling the regulated substance transfer, that accurately shows the level of regulated substance in the tank;

(d)(1) A person who manually gauges the level of regulated substance in the tank with a stick during regulated substance transfer and controls the regulated substance transfer or is in contact with the person who controls the regulated substance transfer.

(2) If any level stick, sight glass, or gauge does not read in volumetric measurements and requires conversion, a clearly labeled conversion chart indicating maximum working capacity of the tank must be available to the person controlling the substance transfer.

Modified, 1 CMC § 3806(g).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: The original paragraphs of subsection (d) were not designated. The Commission designated subsections (d)(1) and (d)(2).

In subsection (b), the Commission changed “ASTs” to “AST’s” to correct a manifest error.

### **§ 65-5-425 Secondary Containment and Leak Detection for Piping**

(a) All piping that is underground must be either:

- (1) Constructed of a double-walled non-corrodible material; or
- (2) Constructed of steel and placed within a non-corrodible secondary containment system such as a seamless or sealed concrete vault.

(b) All piping that is underground must have a leak detection method such as a sensing device, mechanical device, or monthly visual examination.

(c) All underground piping must be constructed so that a release is directed to a location where it can be detected by a leak detection method.

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

### **§ 65-5-430 Corrosion Protection for Piping**

AST system piping (including flanges and joints) which routinely contains a regulated substance must be protected from corrosion using one of the following methods:

(a) Piping made of non-corrosive materials which are compatible with the regulated substances stored in the AST system.

(b) For steel piping:

- (1) The piping shall not be in contact with soil (i.e., above ground and coated with a corrosion resistant material or below ground in water tight, non-corrodible vault); or

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- (2) The piping must be cathodically protected and utilize of one or more of the following methods:
- (i) Sacrificial anodes and dialectical coating; or
  - (ii) Impressed current; or
  - (iii) A method specified in an appropriate nationally recognized association code or practice such as API 651 or associations such as NACE.
- (3) Cathodic protection systems shall be designed by a corrosion expert and maintained to provide protection against external corrosion for the operational life of the piping.
- (4) Each cathodic protection system shall have an access point which enables the owner or operator to check on the adequacy of the cathodic protection. The cathodic protection systems shall be monitored periodically as determined by the corrosion system design.
- (5) AST and piping connections of two dissimilar metals which create a galvanic cell are prohibited.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: In subsection (b)(2)(iii), the Commission inserted the word “as” before “NACE” to correct a manifest error.

### **§ 65-5-435 Leak Detection and AST System Monitoring**

- (a) A method of leak detection for the AST and piping shall be utilized and monitored at least monthly. An automatic sensing device, mechanical device or other appropriate method as approved by the Director may be used. The leak detection method, at a minimum, shall allow a visual examination of the AST system by the owner, operator, or designated representative.
- (1) If a release is detected, it shall be reported and responded to as required by § 65-5-440.
  - (2) Results of monthly leak detection monitoring shall be recorded and maintained by the owner or operator.
  - (3) Monthly monitoring shall occur at a no greater interval than a thirty-day period.
- (b) Existing ASTs without secondary containment under the bottom of the tank that are in contact with the soil, such as vertical flat bottom tanks, and do not have cathodic protection or internal lining shall be tested for tightness within 12 months from the effective date of the regulations in this chapter. Records of the tightness testing shall be maintained on the premises of the AST system. Such tanks shall be tested annually for tightness.
- (c) The owner or operator shall assure that a maintenance and general operations check of the AST system is performed and recorded at least monthly. Monthly monitoring shall occur at a no greater interval than a thirty-day period. Deficiencies noted during the check shall be corrected. The maintenance and operations check shall include:

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- (1) Visual examination of the AST system for deterioration, including, but not limited to, the AST, piping, ancillary equipment and foundation; and
- (2) A visual inspection of the containment areas for accumulation of water and removal of water as necessary; and
- (3) Confirmation that containment drain valves are secured in the closed position when not in use; and
- (4) Monitoring of the leak detection system; and
- (5) A visual of AST system vents for restrictions; and
- (6) Observation for evidence of a release of regulated substance from the AST system.

Modified, 1 CMC § 3806(c), (d), (e), (g).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: In subsection (b), the Commission changed “premises the AST system” to “premises of the AST system” to correct a manifest error.

### § 65-5-440 Release Response

#### (a) Suspected Release

Should the AST system leak detection method, physical observation, inventory discrepancy, or other protocol indicate that a release of a regulated substance may have occurred, it shall be promptly investigated (within 24 hours) and a determination made if a release has occurred.

- (1) If a release is confirmed, DEQ shall be notified of such release within 24 hours of its confirmation.
- (2) If, after the initial discovery of a suspected release, a determination cannot be made within 24 hours that a release has or has not occurred, then DEQ shall be notified immediately of the suspected release.

#### (b) Confirmed Release

- (1) Upon confirmation of a release, the owner or operator shall take prompt action to prevent any further release of the regulated substance.
- (2) Upon confirmation of a release the owner or operator shall take prompt action to identify and mitigate any fire, explosion, and vapor hazards.

(c) Release response to a confirmed release of a regulated substance must be promptly coordinated by the owner or operator with DEQ for evaluation of impacts to the environment. Release response activities to a release of regulated substance from an AST system may include the following as determined by the Director of DEQ:

- (1) Collection of environmental samples (air, soil, surface water, groundwater); and
- (2) Remediation of soil, groundwater, and surface water to conditions which are not harmful to human health and the environment as determined by the Director of DEQ; and
- (3) Other response actions as determined appropriate by the Director of DEQ.

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

**Part 500 - Other Requirements for ASTs**

**§ 65-5-501 Record Keeping**

Owners and operators of AST systems shall retain information reports and records according to this section. Upon DEQ request, AST system owners or operators shall make such data available to the agency for viewing and copying.

(a) The owner and operator shall retain for the life of the AST system, and have available for DEQ inspection and review, the following records:

- (1) AST system repair and modification documentation; and
- (2) Original AST system installation and design specifications; and
- (3) Permits issued under part 100 of this chapter.

(b) The owner and operator shall retain for twelve consecutive months, and have available for DEQ inspection and review, the following records:

- (1) Monthly leak detection records as required by § 65-5-435(a); and
- (2) Monthly maintenance and general operation checklists as required by § 65-5-435(c); and
- (3) The most recent annual AST system tightness test result required by § 65-5-435(b).

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: In subsection (b), the Commission inserted the colon to correct a manifest error.

**§ 65-5-505 Security**

Each owner or operator is responsible to assure that appropriate security measures and procedures are established and implemented to protect the AST system from unauthorized access and vandalism. The security measures and procedures may include, but are not limited to, fencing, lighting, access control, locked entrances, and securing of valves and dispensers.

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

**§ 65-5-510 Signs and Labeling**

(a) AST System Labeling

- (1) Each AST must be clearly labeled indicating the regulated substance stored and the AST's capacity.
- (2) If more than one AST is at a site, each AST must be labeled with a unique AST number.
- (3) Each AST with flammable or combustible regulated substances shall be labeled in accordance with NFPA 30 and 30A as appropriate.

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### (b) Pipeline Labeling

(1) Each AST system pipeline which contains regulated substances shall be clearly labeled with the substance being transported through it.

(2) Each manually operated valve shall be clearly labeled as to its function to prevent the wrong valve from accidental opening or closure.

### (c) Signs

An AST system facility that does not have a person on site 24 hours a day must have a sign with the name, address, and telephone number of the facility owner, operator, or local emergency response contact. The sign must be posted in a conspicuous place and legible from outside any secondary containment area.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: In subsection (a)(1), the Commission changed “ASTs” to “AST’s” to correct a manifest error.

### § 65-5-515 Requirements for ASTs in Vaults

(a) There shall be no backfilling of material around an AST that has been installed in a vault.

(b) The roof of any vault shall be constructed of noncombustible materials.

(c) ASTs shall not share vaults. Each AST shall have its own vault. Adjacent vaults may share a common roof.

(d) Vault openings should be liquid tight and lockable.

(e) There must be sufficient space between the AST and the vault to allow for the inspection of the AST and ancillary equipment.

(f) A continuous leak detection system must be installed, which is capable of detecting regulated substances and water.

(1) The leak detection system should have an alarm which alerts the owner or operator when a leak is detected.

(2) The leak detection system must be maintained and calibrated in accordance with the manufacturer’s requirements.

Modified, 1 CMC § 3806(g).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: In subsection (f)(2), the Commission changed “manufacturers” to “manufacturer’s” and inserted the final period to correct manifest errors.

**§ 65-5-520 Temporary Out-of-service AST Systems**

- (a) If a regulated substance is not introduced to or removed from an AST system for one year or more, the owner or operator shall:
- (1) Maintain the applicable operation and maintenance requirements of part 300, part 400 and part 500 of this chapter; or
  - (2) Notify DEQ within thirty calendar days, in writing, of the date the AST system has been taken out-of-service.
- (b) The owner or operator of an AST system taken temporarily out-of-service shall:
- (1) Secure the AST system to prevent unauthorized entrance or tampering, by:
    - (i) Removal of all substances from the tank, connecting pipe and ancillary equipment; and
    - (ii) Securing fill pipes, gauge openings, or pump pipelines.
  - (2) Render the AST system sufficiently free of vapors to avoid formation of an explosive atmosphere and vent the tank.
  - (3) Clearly label the exterior of the out-of-service AST with the words “Out of Service” and the date the AST system was taken out-of-service.
- (c) AST systems which are out of service for five years or longer shall meet the requirements for permanent closure.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

**§ 65-5-525 Permanent Closure**

- (a) At least thirty days prior to beginning a permanent closure the owner or operator shall notify DEQ of its intent to permanently close their AST system.
- (b) The owner or operator of an AST system that is permanently closed shall:
- (1) Remove all substances from the tank, connecting piping and ancillary equipment;
  - (2) Secure the AST system to prevent unauthorized entrance or tampering by:
    - (i) Securely bolting and locking all manways and valves; and
    - (ii) Capping or plugging fill pipes, gauge openings, or pump pipelines.
  - (3) Thoroughly cleaning the interior of the tank and all associated piping of all sludges, solids and residuals.
  - (4) Dispose any AST system sludges in accordance with applicable CNMI and federal requirements.
  - (5) Render the AST system sufficiently free of vapors, to avoid formation of an explosive atmosphere, and vent the tank.
  - (6) Legibly mark the AST systems to be permanently closed and left onsite with the date of permanent closure.
- (c) The owner or operator shall complete a site assessment, which evaluates the presence of any release from the AST system, and prepare a closure report. The site

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assessment shall be made after notification to DEQ, pursuant to subsection (a) of this section. A copy of the closure report shall be submitted to DEQ.

(1) DEQ will make an on-site inspection prior to the site assessment to evaluate environmental conditions and review AST system maintenance and leak detection records. DEQ will then inform the owner or operator by letter of the necessary information and environmental sampling required for the site assessment.

(2) If contamination of soil, groundwater, or surface water, or free product is discovered or confirmed by either direct observation or environmental sampling and analysis, the owner or operator shall proceed with corrective action as directed by DEQ.

(d) When the Director of DEQ has determined, in writing, that an AST system has met the requirements of permanent closure, including completion of a site assessment and submittal to DEQ of a closure report, the regulations in this chapter are no longer applicable to the closed AST system unless the AST system is put back into use.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: In subsection (c), the Commission changed “which to evaluates” to “which evaluates” to correct a manifest error.

### **Part 600 - Enforcement Authority and Procedures**

#### **§ 65-5-601 Penalties and Remedies for Violation**

The Director of DEQ is authorized to impose the following penalties and remedies for violation of the CNMI Aboveground Storage Tank Regulations, codified in this chapter.

(a) **Enforcement and Remedies:** The Director shall enforce the Act, the regulations in this chapter, and any permit or order issued hereunder, pursuant to and in accordance with the authority in 2 CMC § 3131, as amended.

(b) **Civil Penalties:** The Director may assess civil penalties in accordance with 2 CMC § 3131, as amended.

(c) **Criminal Penalties:** Any person, who knowingly and willfully commits any act in violation of the Act, the regulations in this chapter, or any permit issued thereunder, may be subject to criminal penalties as set forth in 2 CMC § 3131(d), as amended.

(d) The Director may suspend, modify, or revoke any permit, license, registration or certification issued by DEQ for violation of the Acts, the regulations in this chapter and any permit or license issued pursuant to these regulations.

(e) The Director may request that the Attorney General institute a civil action in the Commonwealth Superior Court for a temporary restraining order, injunction, or other

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approaches to enforce any provision of the Act, the regulations in this chapter, administrative order, or permit granted pursuant to these regulations.

Modified, 1 CMC § 3806(d).

History: Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: The Commission created the section title.

### **§ 65-5-605 Procedures for Issuance of Administrative Orders**

(a) In accordance with 2 CMC § 3131, if the Director has reason to believe a violation of the provisions of the Act, the regulations in this chapter, and/or the terms of any permit issued pursuant to the Act and these regulations has occurred or is occurring, the Director may issue a notice of violation to enforce the Act, regulations and/or permit terms. Such notice of violation shall be signed by the Director or his authorized representative and shall provide notice of the facts constituting the violation, penalties that may be imposed, corrective actions and/or mitigating measures required, and time frame in which to take corrective action and/or mitigating measures.

(b) If any person subject to a notice of violation issued pursuant to subsection (a) fails to comply with the corrective action and/or mitigative measures, the Director may issue an administrative order or other such order imposing penalties as provided by 2 CMC § 3131(c). The order shall state the facts constituting the violation, the sections of the Act, regulations or permit involved, the proposed penalty including any permit suspension, revocation, or modification, and monetary penalties including any penalty for cost of corrective action taken by the Division. The order shall also provide notice of the opportunity to request a hearing. Such order shall be personally served or served by certified mail, return receipt, on persons subject to the penalties in the order.

(c) Any person subject to an order imposing penalties pursuant to subsection (b) may request, in writing, a hearing before the designated hearing officer. Request for a hearing shall be served upon the Division within seven calendar days from the date the order is received. Failure to request a hearing within seven calendar days shall constitute a waiver of the right to a hearing and the Division may take the necessary action to enforce the order.

(d) Persons subject to orders issued pursuant to the Act and the regulations in this chapter may also request an informal settlement conference. An informal settlement conference shall not affect the person's obligation to file a timely request for hearing. If a settlement is reached the parties shall forward a proposed consent order for the approval of the Director.

(e) Procedures for hearings shall be conducted in accordance with the Administrative Procedure Act (APA), 1 CMC §§ 9101, et seq.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

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History: Corrected 27 Com. Reg. 24994 (Sept. 22, 2005); Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: Due to a publication error, subsections (c), (d) and (e) were omitted from the original publication of the proposed regulations in the Commonwealth Register. See 27 Com. Reg. at 24165. DEQ republished these provisions with a notice of erratum at 27 Com. Reg. 24994 (Sept. 22, 2005).

### **Part 700 - Miscellaneous Provisions**

#### **§ 65-5-701 Severability**

Should any provision of the regulations in this chapter or its application to any person or circumstance be declared unconstitutional or invalid by a court of competent jurisdiction, the remaining portion of the regulations and/or the application of the affected provision to other persons or circumstance shall not be affected thereby.

Modified, 1 CMC § 3806(d).

History: Corrected 27 Com. Reg. 24994 (Sept. 22, 2005); Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: Due to a publication error, this section was omitted from the original publication of the proposed regulations in the Commonwealth Register. See 27 Com. Reg. at 24165. DEQ republished this provision with a notice of erratum at 27 Com. Reg. 24994 (Sept. 22, 2005).

#### **§ 65-5-705 Effective Date**

The regulations in this chapter will take effect ten calendar days after notice of adoption is published in the Commonwealth Register.

Modified, 1 CMC § 3806(d), (e).

History: Corrected 27 Com. Reg. 24994 (Sept. 22, 2005); Adopted 27 Com. Reg. 24680 (July 20, 2005); Proposed 27 Com. Reg. 24139 (May 18, 2005).

Commission Comment: Due to a publication error, this section was omitted from the original publication of the proposed regulations in the Commonwealth Register. See 27 Com. Reg. at 24165. DEQ republished this provision with a notice of erratum at 27 Com. Reg. 24994 (Sept. 22, 2005).