

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

CHAPTER 65-130

WATER QUALITY STANDARDS

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

Chapter History: Amdts Adopted 36 Com. Reg. 35400 (Aug. 28, 2014); Amdts Proposed 36 Com. Reg. 35171 (July 28, 2014); Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 15554 (Aug. 15, 1997); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Amdts Adopted 5 Com. Reg. 2453 (Aug. 31, 1983); Amdts Proposed 5 Com. Reg. 2242 (July 29, 1983); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: For a complete history of the authority of the Division of Environmental Quality (DEQ), see the commission comment to NMIAC chapter 65-10.

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adopted prior to the effective date of this Executive Order shall continue to be effective until revised, amended, repealed or terminated.”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

§ 65-130-001 Authority

The regulations in this chapter have been promulgated by the Bureau of Environmental and Coastal Quality in accordance with the Commonwealth Environmental Protection Act, (CEPA), 2 CMC §§ 3101 to 3134, Public Law 3-23; the Commonwealth Environmental Amendments Act, (CEAA), 1999, Public Law 11-103; and the Commonwealth Groundwater Management and Protection Act (CGMPA), 1988, 2 CMC §§ 3311 to 3333, Public Law 6-12, of the Commonwealth of the Northern Mariana Islands, and under the provisions of the Clean Water Act, Pub. L. No. 92-500 (33 U.S.C. §§ 1251, et seq.) as 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. The BECQ shall apply these regulations and standards to all marine, fresh water bodies, and ground water in the Commonwealth.

Modified, 1 CMC § 3806(d).

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History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: The 1986, 1991, 1997 and 2004 amendments readopted and republished the Water Quality Standards in their entirety. The Commission, therefore, cites these amendments in the history sections throughout this chapter. The Commission corrected the citations to Commonwealth and federal public laws pursuant to 1 CMC § 3806(g).

§ 65-130-005 Purpose

The purpose of the regulations in this chapter is to establish standards for water quality for all Commonwealth or state waters and ground water in order to protect their use and value for propagation of fish and wildlife, recreational purpose, public water supply use, and taking into consideration their use and value for commerce.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-010 Anti-degradation Policy

(a) Anti-degradation Policy

It shall be the public policy of the Commonwealth of the Northern Mariana Islands that:

(1) The protection, maintenance, conservation, and improvement of the quality of the waters for the growth and propagation of aquatic life, for marine research and for the conservation of coral reefs and wilderness areas, and for domestic (including drinking water), agricultural, commercial, industrial, recreational, and other uses are an historic and legal right of the people of the Northern Mariana Islands.

(2) The achievement of the water quality standards of the Commonwealth of the Northern Mariana Islands is in the best interest of the protection of public health and the environment.

(3) The following three tiers of protection for water quality are hereby established:

(i) Tier 1: In all waters, the existing uses and the minimum level of water quality necessary to protect the existing uses shall be maintained and protected. In no case shall any action be allowed which would lower water quality below that necessary to maintain and protect designated and existing uses. The minimum level of water quality necessary to protect a designated or existing use shall be the water quality criteria for the corresponding designated use classification. In water bodies or segments of water bodies where the existing level of water quality routinely falls below or just above the applicable

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water quality criteria for designated uses, actions that would further lower water quality are prohibited.

(ii) Tier 2: Waters where the quality exceeds the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall be maintained and protected, unless the Commonwealth determines that the lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation to occur the Commonwealth shall assure the following:

- (A) The lower water quality be fully protective of existing and designated uses,
- (B) That significant impacts on water quality and economic and social development be subject to detailed water quality and economic analyses,
- (C) The cumulative impacts of all previous and reasonably foreseeable future actions be considered,
- (D) That inter governmental coordination and public participation be included in any determination,
- (E) The highest statutory and regulatory requirements be achieved for all new and existing point sources, and
- (F) That all cost effective and reasonable Best Management Practices (BMPs) for non-point source control be employed.

(iii) Tier 3: High quality waters which constitute an outstanding Commonwealth resource, such as waters of national parks, marine sanctuaries, wildlife refuges and waters of exceptional recreational or ecological significance shall be maintained and protected. Actions which would lower water quality in such waters are prohibited, with the exception of temporary degradation deemed necessary for the construction of important park infrastructure, pollution control devices, and best management practices designed to improve water quality.

(4) There shall be no point or non-point discharge of untreated sewage or other wastewater into any planned or existing ground or surface source of drinking water.

(5) All sewage, wastewater, and any other matter shall receive a degree of treatment necessary to protect the beneficial uses of the Commonwealth waters before discharging.

(6) The existing uses in wetlands and the level of water quality necessary to protect those uses shall be protected.

(b) Requirements for Anti-degradation Review

(1) Any action which may lower water quality is subject to review for consistency with the anti-degradation policy. Existing permit programs requiring anti-degradation review include, at a minimum: section 401 water quality certifications issued under part 600 of this chapter; and actions requiring a Division of Coastal Resources Management Major Siting or Wetland and Lagoon Area of Particular Concern Permit. The Administrator of BECQ may also require anti-degradation review for any other actions which have the potential to lower water quality, such as adoption or revision of regulations, land use plans, highway and drainage master plans, and draft/proposed legislation. However, the results of such review shall be in the form of a notification letter only, unless the action is required to obtain a permit, license, or approval from BECQ. The provision of detailed water quality and economic data and analysis, if determined to be necessary by the

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Administrator under the requirements above for tier 2, shall be the responsibility of the party proposing the action.

(2) Reviews of all applicable actions shall consider all aspects of the proposed action that may affect water quality, including temporary, long term, and cumulative impacts.

(3) Reviews of all applicable actions shall be documented in writing, and shall include a determination by the Administrator of the following:

(i) The existing level of water quality, and the appropriate tier of protection for the area affected by the proposed action;

(A) In areas of the Commonwealth where insufficient data exists to reasonably determine existing water quality, tier 2 will be presumed to apply, unless sufficient evidence exists that could reasonably support a determination of tier 1 or tier 3.

(ii) The extent to which the proposed action is reasonably expected to lower water quality;

(iii) Statements detailing whether the proposed activity meets the requirements of the anti-degradation policy appropriate to the applicable tier of protection. For actions which would lower water quality in a tier 2 water, the statement must include a detailed determination addressing compliance with each of the tier 2 requirements listed in subsection (a)(3)(ii).

(4) In determining whether a discharge of dredged or fill material is consistent with the anti-degradation policy, BECQ shall evaluate whether the proposed discharge constitutes the least environmentally damaging practicable alternative for achieving the project purpose, applying the regulatory criteria set forth at 40 CFR § 230.10(a) and its subparts, and BECQ shall evaluate whether the proposed discharge will cause or contribute to significant degradation of Commonwealth or state waters, applying the criteria set forth in 40 CFR § 230.10(c).

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

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: The 1986 amendments amended former subsections (e) and (f). The 1991 amendments deleted former subsections (d), (e) and (f), added new subsections (d), (e) and (h), redesignated the remaining subsections accordingly and amended subsections (b), (c) and (f).

The 2004 amendments added new subsection (b) and amended subsection (a).

§ 65-130-015 Definitions

(a) “Acute exposure value” - The threshold value at or below which there should be no unacceptable effects to aquatic organisms and their uses if the one-hour concentration does not exceed that value more than once every three years on the average.

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- (b) “Acute toxicity” means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms.
- (c) “Administrator” means the Administrator of the Bureau of Environmental and Coastal Quality.
- (d) “Ambient conditions” means the existing water quality conditions at a specific location not influenced by anthropogenic sources.
- (e) “BECQ” means the Bureau of Environmental and Coastal Quality.
- (f) “Best Management Practices” means a physical, structural, managerial, or operational practice approved by BECQ that, when used singly or in combination, prevent to reduce pollutant discharges or otherwise protect water quality.
- (g) “Brackish waters” means waters with dissolved inorganic ions (salinity) greater than 500 ppm (parts per million), but less than 30,000 ppm.
- (h) “Chronic exposure value” - The threshold value at or below which there should be no unacceptable effects to aquatic organisms and their uses if the four-day concentration does not exceed that value more than once every three years on the average.
- (i) “Chronic toxicity” means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as an alteration in growth rate or reproduction.
- (j) “Coastal waters” means all waters of a depth less than twenty fathoms, or waters up to distance of 1,000 feet off-shore from the mean high water mark, whichever is the greater distance from the shoreline.
- (k) “Commonwealth” means Commonwealth of the Northern Mariana Islands.
- (l) “Commonwealth or state waters” means all waters, fresh, brackish, or marine, including wetlands, surrounding or within the Commonwealth.
- (m) “CWA” means the Clean Water Act, Pub. L. No. 92-500 as amended: 33 U.S.C. §§ 1251, et seq.
- (n) “Existing uses(s)” means those uses actually attained in Commonwealth or state waters on or after November 28, 1975, whether or not they are included in the water quality standards (40 CFR § 131.3.)
- (o) “Fresh waters” means all waters with dissolved inorganic ions of less than 500 ppm.

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- (p) “Ground water” means water derived from the subsurface which is in the zone of saturation.
- (q) “Mean high water line” means a line established on the shore of tidal waters, which also may be depicted on a chart or map, which represents the intersection of the land with the water surface at the elevation of mean high water. Mean high water elevation is a tidal datum, the average of all the high water heights from official tide gauge records observed over a specified period, as calculated by the National Oceanographic and Atmospheric Administration.
- (r) “Mixing zone,” as applied to surface waters, means an area of specified dimensions where a discharge undergoes an initial dilution within a specified sub-area of the mixing zone in the immediate vicinity of the discharge point (zone of initial dilution), then undergoes secondary mixing to the limit of the mixing zone boundary. A mixing zone is an allocated impact zone where water quality criteria can be exceeded but where acutely toxic conditions are prevented (except as defined within a limited zone of initial dilution) and where public health and welfare are not endangered.
- (s) “Oceanic waters” means all other marine waters outside of the twenty fathom depth contour or greater than 1,000 feet off-shore from the mean high water line, whichever is the greater distance from the shoreline.
- (t) “Pollutant” means any substance that causes pollution.
- (u) “Pollution” means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.
- (v) “Receiving water(s)” means Commonwealth or state waters into which pollutants, wastes, or wastewaters are, or may be, discharged.
- (w) “Toxic” means lethal, oncogenic, teratogenic or mutagenic, or otherwise damaging to man or other living organisms.
- (x) “Toxic pollutant” means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.
- (y) “Wastewater” means sewage, industrial waste, or other waste, or any combination of these, whether treated or untreated, plus any admixed land runoff.

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(z) “Waterbody” means any Commonwealth or state surface water and any water course/conveyance including modified stream courses and/or any storm water drainage system, whether perennially wet or intermittently wet and dry.

(aa) “Wetlands” means those areas that are inundated or saturated by surface or groundwater with a frequency sufficient to support a prevalence of plant or aquatic life that requires seasonally saturated soil conditions for growth and/or reproduction. Wetlands include swamps, marshes, mangroves, lakes, natural ponds, surface springs, streams, estuaries and similar areas in the Northern Mariana Islands archipelago. Wetlands include both wetlands connected to other waters and isolated wetlands. Wetlands do not include those artificial wetlands intentionally created to provide treatment of wastewater or stormwater runoff.

(bb) “Zone of passage” means a continuous water route of the volume, area, and quality necessary to allow passage of free-swimming and drifting organisms with no significant effects produced on their populations.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Amdts Adopted 5 Com. Reg. 2453 (Aug. 31, 1983); Amdts Proposed 5 Com. Reg. 2242 (July 29, 1983); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (y). The Commission corrected the citation to the Clean Water Act in subsection (j) pursuant to 1 CMC § 3806(g).

The definitions have been significantly amended over time. The 2004 amendments readopted this section in its entirety, added new subsections (b), (f), (i), (n) and (v), deleted numerous former subsections and amended subsections (k), (s), (t) and (x).

Part 100 - Classification of Water Uses

§ 65-130-101 Marine Waters

(a) Class AA

(1) It is the objective of this class that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-related source or actions. To the extent practicable, the wilderness character of such areas shall be protected. Mixing zones for dredging and the discharge of dredged or fill material may be permitted as allowed under § 65-130-525. Mixing zones for any other discharge shall not be permitted.

(2) Siting of any source of human or animal wastewater or sewage discharge within 50 feet of any waterbody, or within 25 ft of the top of any cliff/steep embankment (greater

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than 20 ft vertical drop or having greater than 50% slope) above any waterbody is prohibited. This setback is a minimum setback and any additional setbacks listed in CNMI Wastewater Treatment and Disposal Rules and Regulations (NMIAC Title 65, Chapter 120) shall apply.

(3) The uses to be protected in this class of waters are the support and propagation of shellfish and other marine life, conservation of coral reefs and wilderness areas, oceanographic research, and aesthetic enjoyment and compatible recreation with risk of water ingestion by either children or adults.

(4) The classification of any water area as class AA shall not preclude other uses of such waters compatible with these objectives and in conformance with the criteria applicable to them.

(b) Class A

(1) It is the objective of this class of waters that their use for recreational purposes and aesthetic enjoyment be protected.

(2) Any other use shall be allowed as long as it is compatible with the protection and propagation of fish, shellfish, and wildlife, and with compatible recreation with risk of water ingestion by either children or adults. Such waters shall be kept clean of solid waste, oil and grease, and shall not act as receiving waters for any effluent which has not received the best degree of treatment of control practicable under existing technology and economic conditions and compatible with standards established for this class. A mixing zone is approvable in such waters.

(3) Siting of any source of human or animal wastewater or sewage discharge within 50 feet of any waterbody, or within 25 ft of the top of any cliff/steep embankment (greater than 20 ft vertical drop or having greater than 50% slope) above any waterbody is prohibited. This setback is a minimum setback and any additional setbacks listed in CNMI Wastewater Treatment and Disposal Rules and Regulations (NMIAC Title 65, Chapter 120) shall apply.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: The original paragraphs of subsections (a) and (b) were not designated. The Commission designated subsections (a)(1) through (a)(3) and (b)(1) and (b)(2).

The 1986 amendments amended subsection (a)(1). The 1993 amendments amended subsections (a)(1), (a)(2) and (b)(2). The 1997 amendments amended subsections (a)(1) and (b)(2). The 2004 amendments amended subsections (a)(1), (a)(2) and (b)(2). The 2014 amendments added subsections (a)(2) and (b)(3).

§ 65-130-105 Fresh Surface Waters

(a) Class 1

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(1) It is the objective of this class that these waters remain in their natural state as nearly as possible with an absolute minimum of pollution from any human-caused source. To the extent possible, the wilderness character of such areas shall be protected. Wastewater discharges and zone of mixing into these waters are prohibited.

(2) Siting of any source of human or animal wastewater or sewage discharge within 50 feet of any waterbody, or within 25 ft of the top of any cliff/steep embankment (greater than 20 ft vertical drop or having greater than 50% slope) above any waterbody is prohibited. This setback is a minimum setback and any additional setbacks listed in CNMI Wastewater Treatment and Disposal Rules and Regulations (NMIAC Title 65, Chapter 120) shall apply.

(3) The uses to be protected in this class of water are for domestic water supplies, food processing, the support and propagation of aquatic life, groundwater recharge, compatible recreation and aesthetic enjoyment including water contact recreation with risk of water ingestion by either children or adults.

(b) Class 2

(1) It is the objective of this class of waters that their use for recreational purposes, propagation of fish and other aquatic life, and agricultural and industrial water supply not be limited in any way. The uses to be protected in this class of waters are all uses compatible with the protection and propagation of fish and other aquatic life, groundwater recharge, and with recreation in and on these waters. Compatible recreation may include limited body contact activities. Such waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control practical under technological and economic conditions and compatible with the standards established for this class. A zone of mixing is permissible in these waters.

(2) Siting of any source of human or animal wastewater or sewage discharge within 50 feet of any waterbody, or within 25 ft of the top of any cliff/steep embankment (greater than 20 ft vertical drop or having greater than 50% slope) above any waterbody is prohibited. This setback is a minimum setback and any additional setbacks listed in CNMI Wastewater Treatment and Disposal Rules and Regulations (NMIAC Title 65, Chapter 120) shall apply.

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

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

The 1991 amendments amended subsections (a)(2) and (b). The 1997 amendments amended subsections (a)(1) and (b). The 2004 amendments amended subsections (a)(2) and (b). The 2014 amendments added subsections (a)(2) and (b)(2).

§ 65-130-110 Protection of Wetlands

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(a) Wetlands are waters of the Commonwealth and are subject to the provisions of this chapter. Point or non-point sources of pollution shall not cause destruction or impairment of wetlands and shall meet the goals and standards set forth in the Division of Coastal Resources Management Rules and Regulations. All wetlands are to remain in as near their natural state as possible and shall be protected to support the propagation of aquatic and terrestrial life. All provisions of the regulations in this chapter apply to all wetlands unless replaced by site specific or wetlands water quality standards adopted by the Commonwealth and approved by EPA.

(b) Siting of any source of human or animal wastewater or sewage discharge within 50 feet of any waterbody, or within 25 ft of the top of any cliff/steep embankment (greater than 20 ft vertical drop or having greater than 50% slope) above any waterbody is prohibited. This setback is a minimum setback and any additional setbacks listed in CNMI Wastewater Treatment and Disposal Rules and Regulations (NMIAC Title 65, Chapter 120) shall apply.

Modified, 1 CMC § 3806(d), (g).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

Commission Comment: The Commission changed “to propagation” to “the propagation” to correct a manifest error. The 2014 amendments added subsection (b).

§ 65-130-115 Protection of Ground Water

Whereas the Commonwealth is almost entirely dependent on groundwater for its drinking water supplies, the regulations in this chapter set water quality standards for surface waters and land disposal activities to ensure the protection of this natural resource. Requirements for land disposal activities will be determined according to groundwater management zones promulgated under the CNMI Well Drilling and Well Operations Regulations [NMIAC, title 65, chapter 140] for Saipan; for Tinian and Rota these requirements will be dependent on known geological and aquifer characteristics, lateral distances to nearby water wells, and general quality and vulnerability of existing groundwater until specific groundwater quality management zones are developed.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

Part 200 - Classification and Establishment of Water Use Areas

§ 65-130-201 Rota

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(a) Class AA

All coastal and oceanic waters surrounding Rota except for those waters delineated in class A.

(b) Class A

The coastal waters known as East Harbor and West Harbor.

(c) Class 1

All natural (not man-made) fresh surface waters on Rota.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: The 1997 amendments amended subsection (c). The 2004 amendments moved this part from former part 8 and redesignated the remaining parts accordingly.

§ 65-130-205 Tinian and Aguigan

(a) Class AA

All coastal and oceanic waters surrounding Tinian and Aguigan except for those waters delineated in class A.

(b) Class A

The coastal waters known as San Jose Harbor.

(c) Class 1

All fresh surface waters on Tinian and Aguigan.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-210 Saipan

(a) Class AA

All coastal and oceanic waters surrounding Saipan except for those waters delineated in class A.

(b) Class A

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(1) The waters up to 3,000 feet from the mean high water mark on the shoreline from the entrance to Smiling Cove Marina to Saddok As Agatan, inclusive of the waters within Smiling Cove Marina and its entrance channel.

(2) The waters surrounding the Agingan Wastewater Treatment Plant, within a 1,000 foot radius of the outfall.

(c) Class 1

All fresh surface waters on Saipan.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

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

The 1986 amendments amended subsection (b). The 1997 amendments amended subsections (a) and (b). The 2004 amendments amended subsections (a), (b)(1) and (b)(2).

§ 65-130-215 Northern Islands

(Farallon de Medinilla, Anatahan, Sariguan, Guguan, Alamagan, Pagan, Agrihan, Asuncion, Maug, Farallon de Pajaros)

(a) Class AA

All coastal and oceanic waters surrounding the Northern Islands except for those delineated in class A.

(b) Class A

The coastal and oceanic waters surrounding Farallon de Medinilla.

(c) Class 1

All fresh surface waters in the Northern Islands.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Part 300 - Basic Water Quality Criteria Applicable to All Waters

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

§ 65-130-301 Basic Surface Water Quality Criteria

All surface waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants and shall be capable of supporting desirable aquatic life and be suitable for recreation in and on the water.

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: This section was originally the first paragraph of part 300. The Commission created the section title.

§ 65-130-305 Verification by Monitoring

This part will be subject to verification by monitoring as may be prescribed by the Administrator to assure freedom from any of the following conditions:

- (a) Materials that will settle to form objectionable sludge or bottom deposits.
- (b) Floating debris, oil, grease, scum, or other floating materials.
- (c) Substances in amounts sufficient to produce taste, odor, or detectable off flavor in the flesh of fish; or in amounts sufficient to produce odor or turbidity in the water, or other conditions that alter the naturally occurring characteristics of the water.
- (d) High temperatures; biocides; pathogenic organisms; toxic, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human health or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water.
- (e) Soil particles resulting from erosion on land involved in earth work, such as construction of public works; highways; subdivisions; recreational; commercial, or industrial development; or the cultivation and management of agricultural lands that adversely affect beneficial use.
- (f) Substances or conditions or combinations thereof in concentration which produce undesirable aquatic life.

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com.

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Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: This section was originally the second paragraph of part 300. The Commission created the section title.

The 1991 amendments added a new subsection (e) and redesignated subsection (f). The 1997 amendments amended the opening paragraph and subsection (d). The 2004 amendments amended the opening paragraph and subsections (c) and (e).

Part 400 - Specific Water Quality Criteria

§ 65-130-401 Microbiological Requirements

(a)

Microbiological Requirements	Applicable to:
(1) Fecal Coliform The fecal coliform concentration shall not exceed a geometric mean of 200 CFUs per one hundred milliliter based on samples taken in any 30 day interval nor shall any single sample exceed 400 CFUs per one hundred milliliter at any time.	All Waters
(2) Enterococci The Enterococci concentration shall not exceed a geometric mean of 35 per 100 mL based on samples taken in any 30 day interval. No single sample result shall exceed 130 Enterococci per 100 mL.	All Waters
(3) <i>E. coli</i> The <i>E. coli</i> concentration shall not exceed a geometric mean of 126 per 100 mL based on samples taken in any 30 day interval. The Statistical Threshold Value is 410 <i>E. coli</i> per 100 ml.	All Fresh Waters

(b) Fecal coliform and enterococci may originate from environmental sources as well as from human and animal fecal contamination. Where these microbiological standards are exceeded, a determination of the impact on public health and the environment may be based upon additional sampling, a sanitary survey of the drainage area contributing runoff to the contaminated water, or special studies of the environmental sources of fecal coliform and enterococci in the waters of the CNMI. Procedures for beach closures and public advisories can be found in the latest edition of the CNMI Water Quality Standards Implementation Guidance Manual.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 36 Com. Reg. 35400 (Aug. 28, 2014); Amdts Proposed 36 Com. Reg. 35171 (July 28, 2014); Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8

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Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The 1991 amendments revised subsection (a) in its entirety and added new subsections (b) and (c). The 1997 amendments readopted and republished this section in its entirety with numerous amendments. The 2004 amendments amended subsection (b) and deleted former subsection (c). The July 2014 Notice of Proposed Regulations contained the following statement:

The amendments to the Water Quality Standards Regulations adopted on June 11th, 2014, stated in Part 1.6.1 § 65-130-401 Microbiological Requirements, that the *E. coli* requirement was applicable to “All Waters”. This is a typographical error. Prior regulations stated that the *E. coli* requirement was applicable to fresh waters, which is what BECQ intended to retain. BECQ wishes to correct the typographical errors. Therefore, Part 1.6.1 § 65-130-401 Microbiological Requirements shall now read:

Microbiological Requirements	Applicable to:
(b) <i>E. coli</i> . The <i>E. coli</i> concentration shall not exceed a geometric mean of 126 per 100 mL based on...	All Fresh Waters

36 Com. Reg. 35171-35172. There were no amendments to the Water Quality Standards Regulations adopted on June 11, 2014, and the designation of the *E. coli* subsection as subsection (b) appears to refer to the 2004 version of the regulation. The Commission amended the May 2014 version of the regulation to apply the *E. coli* requirements to all fresh waters.

The Commission placed the phrase “*E. Coli*” in subsection (a) in italics pursuant to 1 CMC § 3806(g).

§ 65-130-405 pH

pH	Applicable To
pH shall not deviate more than 0.5 units from a value of 8.1; no lower than 7.6 or higher than 8.6	A, AA
pH shall not deviate more than 0.5 from ambient conditions and shall not be lower than 6.5 nor higher than 8.5.	1, 2

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-410 Nutrients

Parameter	Concentration Shall Not Exceed (mg/l)	Applicable To
Nitrate-Nitrogen	0.20	AA
	0.50	A
Total Nitrogen	0.4	AA

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	0.75 1.50	A, 1 2
Orthophosphate	0.025 0.05 0.10	AA A 1, 2
Total Phosphorus	0.025 0.05 0.10	AA A 1, 2
Ammonia (un-ionized)	0.02	AA, A, 1, 2

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-415 Dissolved Oxygen

Concentration of dissolved oxygen in all waters shall not be less than 75% saturation. Where natural conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.

History: Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-420 Total Filterable Suspended Solids

Total filterable suspended solids	Applicable to
Concentrations of suspended matter at any point shall not be increased from ambient conditions at any time, and should not exceed 5 mg/l except when due to natural conditions.	AA, 1
Concentrations of suspended matter at any point shall not be increased from ambient conditions at any time, and should not exceed 40 mg/l except when due to natural conditions.	A, 2

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

Commission Comment: The 1997 amendments deleted former § 7.5, entitled “Total Dissolved Solids, Salinity and Currents,” and replaced it with § 65-130-320 and § 65-30-325. See 13 Com. Reg. at 8321 (Nov. 15, 1991); 8 Com. Reg. 4465 (Aug. 15, 1986); 5 Com. Reg. at 1943 (Mar. 31, 1983).

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§ 65-130-425 Salinity

(a) Marine waters: No alterations of the marine environment shall occur that would alter the salinity of marine or estuarine waters more than 10% from ambient conditions or which would otherwise adversely affect the indigenous biota and sedimentary patterns, except when due to natural causes.	AA, A
(b) Fresh water: The maximum allowable amount of chlorides and sulfates shall be 250 mg/l, and the total dissolved solids shall not exceed 500 mg/l or 133% of the ambient condition. The salinity of fresh water sources and wetlands shall not be increased more than 20% from ambient conditions.	1, 2

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 65-130-430 Temperature

Water temperature shall not vary by more than 1.0°C from the ambient conditions.	AA, A, 1, 2
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History: Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-435 Turbidity

(a) Turbidity at any point, as measured by nephelometric turbidity units (NTU), shall not exceed 0.5 NTU over ambient conditions except when due to natural conditions.	AA, 1
(b) Turbidity values (NTU) at any point shall not exceed 1.0 NTU over ambient conditions.	A, 2

History: Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The 1991 amendments amended subsections (a) and (b). The 2004 amendments amended subsection (b).

§ 65-130-440 Radioactive Materials

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Discharge of radioactive materials at any level into any Commonwealth or state waters is strictly prohibited.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-445 Oil and Petroleum Products

The concentration of oil or petroleum products in any Commonwealth or state waters shall not:

- (a) Be detectable as a visible film, sheen, or discoloration of the surface or cause an objectionable odor.
- (b) Cause tainting of fish or other aquatic life, be injurious to the indigenous biota, or cause objectionable taste in drinking water.
- (c) Form an oil deposit on beaches or shoreline, or on the bottom of a body of water.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-450 Toxic Pollutants

(a) In order that the designated uses of Commonwealth or state waters be protected, all waters shall be free from toxic pollutants in concentrations that are lethal to, or that produce detrimental physiological responses in human, plant, or animal life. Detrimental responses include, but are not limited to: decreased growth rate and decreased reproductive success of resident or indicator species; or significant alterations in population, community ecology, or receiving water biota.

(b) Criteria for toxic pollutants are given as either a numeric criteria or for mixtures of pollutants with no recommended criteria, are determined by multiplying an appropriate application factor by the concentration determined to be lethal to 50% of the most sensitive indigenous organism after 96 hours of exposure (96 LC 50). The 96 LC 50 values shall be determined by using bioassay procedures consistent with those described in the latest edition of Standard Methods for the Examination of Water and Wastewater (for ordering information, contact the American Public Health Association, 1015

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Fifteenth Street, NW, Washington, D.C. 20005-2605, or go to <http://www.apha.org> to order on-line).

(c) In order to determine compliance with this section, the Administrator may require additional studies of indicator organisms which include, but are not limited to, analyses of species diversity, species abundance, reproductive success, population density, or growth anomalies. Additionally, effects on human health due to bio-concentration of toxic pollutants shall be considered.

(d) Aquatic life and human health numeric criteria for the toxic pollutants included in the CWA § 307(a) list of priority pollutants are incorporated by reference into the CNMI Water Quality Standards (National Recommended Water Quality Criteria: 2013, (EPA 2013) available at <http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm>)

(1) Acute Toxicity Standards: All Commonwealth or state waters shall be free from pollutants in concentrations which exceed the acute standards listed respectively for fresh and marine waters (EPA 2013).

(2) Chronic Toxicity Standards: All Commonwealth or state waters shall be free from pollutants in concentrations which on average during any 24-hour period exceed the chronic standards listed respectively for fresh and marine waters (EPA 2013).

(3) Criteria are listed below for maximum levels of total residual chlorine allowable in Commonwealth waters.

Pollutant	<u>Fresh Water</u>		<u>Marine Water</u>	
	Acute	Chronic	Acute	Chronic
Chlorine ($\mu\text{g/L}$)	19	11	13	7.5

(e) In waters designated for use as a source of public water supply, the human health numeric criteria shall be those listed in the EPA 2002 publication, Appendix 1, for water plus organism consumption and shall be at least as stringent as the maximum contaminant levels (MCLs) for drinking water established in the CNMI Drinking Water Regulations [NMIAC, title 65, chapter 20]. In waters not designated as a source of public water supply, the human health numeric criteria shall be those listed in the EPA 2002 publication, Appendix 1, for organism consumption only. The human health numeric criteria for arsenic in the EPA 2002 publication are an exception. These arsenic criteria are excluded from the CNMI standards, and instead, the CNMI human health criterion for arsenic is 5 $\mu\text{g/L}$.

(f) Site specific criteria shall be developed for toxic pollutants for which: numeric water quality criteria have not been established; a species inhabiting a given site may be more or less sensitive than those used in developing the established criteria; the water chemistry (e.g., pH, hardness, temperature, suspended solids, etc.) appears to differ significantly from the laboratory water used in developing the criteria; or the residual toxicity or synergistic (combined) effect of pollutants requires analyses and development of site specific criteria.

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(g) Site specific criteria for aquatic life and human health shall be derived from the CWA § 304(a)(1) water quality criteria or by methods published by the U.S. Environmental Protection Agency as described in 45 Fed. Reg. 79318 (November 28, 1980).

(h) In areas where site specific criteria are developed, BECQ shall regulate point source discharges by establishing effluent limits which are protective of the designated uses of the waters in the area.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (d). The Commission corrected the abbreviation for microgram in subsection (e) from “ug” to “µg” pursuant to 1 CMC § 3806(g).

The 1991 amendments readopted and republished this section in its entirety with numerous amendments and additions. The 1997 amendments amended subsections (c) and (d). The 2004 amendments amended subsections (a), (b), (c), and (d), and added subsections (e) through (h).

The 1991 amendments deleted former § 7.11, entitled “General Toxic Standards.” See 8 Com. Reg. at 4468 (Aug. 15, 1986); 5 Com. Reg. at 1946 (Mar. 31, 1983).

§ 65-130-455 General Considerations

(a)(1) Effects of high temperature, biocides, pathogenic organisms or other deleterious substances at levels or combinations sufficient to interfere with aquatic life or human health, or in amounts sufficient to interfere with the beneficial use of the water shall be evaluated, at a minimum, by use of a 96-hour bioassay as described in the most recent editions of Standard Methods for the Examination of Water and Wastewater (for ordering information, contact the American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005-2605, or go to <http://www.apha.org> to order on-line). Survival of test organisms shall not be less than that in controls which utilize appropriate water. Failure to determine presence of toxic pollutants by this method shall not preclude determinations of excessive levels of toxic pollutants on the basis of other criteria or methods.

(2) References for approved methods are: EPA 600/4-91/002 Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, Second Edition, 1994; or EPA 600/4-90/027F Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Cincinnati, Ohio, EMSL, Fourth Edition, 1993; or EPA 600/4-600 R-95/136 Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine Estuarine Organisms, Cincinnati, Ohio, EMSL, May, 1995.

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(b) Pollutant discharges shall be regulated so as to protect not only the receiving waters but also the surrounding Commonwealth or state waters and marine life which are affected indirectly through pollutant discharges.

(c) Section 65-130-305(e) shall be met upon showing that the land on which the erosion occurred or is occurring is being managed in accordance with the CNMI Earthmoving and Erosion Control Regulations, as amended, [NMIAC, title 65, chapter 30], and that the discharge has received the best degree of treatment or control through the implementation of BMPs, or that a comprehensive conservation program is being actively pursued, and that the severity of impact of the residual soil reaching the receiving body of water is deemed by the Administrator to be acceptable.

(d) The health and life history characteristics of aquatic organisms in waters affected by controllable water quality factors shall not differ significantly from those for the same waters in areas unaffected by controllable water quality factors. Numeric biological indices shall be used as a method to determine the level of use support of aquatic biota and aquatic habitat in any water classification and for monitoring as required for applicable permits.

(e) Controllable water quality factors shall not cause a detrimental increase in concentrations of toxic pollutants found in bottom sediments or aquatic life.

(f) BECQ authorizes the use of compliance schedules for water quality-based effluent limitations in national pollution discharge elimination system (NPDES) permit issued by the permitting authority.

(g) Procedures for implementation of water quality standard criteria can be found in the latest edition of the CNMI Water Quality Standards Implementation Guidance Manual.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: The 1986 amendments deleted former subsection (d). The 1991 amendments deleted former subsection (a), added new subsections (c) and (d), redesignated the remaining subsections accordingly and amended subsections (a) and (b). The 1997 amendments amended subsections (b) and (c). The 2004 amendments added new subsection (a)(2) and amended subsections (a)(1), (b), (c) and (d). The 2014 amendments added subsections (f) and (g).

Part 500 - Mixing Zone in Receiving Waters

§ 65-130-501 Mixing Zones; When Permitted

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The water quality criteria in the regulations in this chapter shall apply within a mixing zone unless specific alternative criteria have been approved by the BECQ. Mixing zones will not be granted in lieu of reasonable control measures to reduce point source pollutant discharges but will be granted to complement the applicable controls. A limited mixing zone in the immediate area of a point source of pollution may be allowed if the conditions set out in this part are met.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: This section was originally an introduction to part 500. See 19 Com. Reg. at 14927 (Jan. 15, 1997). The Commission created the section title.

§ 65-130-505 Establishment of Mixing Zone

No mixing zone shall be established unless the continuation of the function or operation involved in the discharge by the granting of the mixing zone is in the public interest, and the discharge occurring or proposed to occur does not substantially endanger public health and safety.

History: Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

Commission Comment: The 1991 amendments deleted former § 9.1 and added new §§ 9.1 through 9.4, codified at §§ 65-130-505 through 65-130-520. See 8 Com. Reg. at 4470 (Aug. 15, 1986); 5 Com. Reg. at 1949 (Mar. 31, 1983).

§ 65-130-510 Prevention, Control, and Abatement

If the mixing zone is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it may be allowed until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the Administrator may prescribe. No renewal of a mixing zone shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved.

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

§ 65-130-515 Time Limit for Mixing Zone

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The Administrator may issue an approval for the establishment of a mixing zone for a period not to exceed five years.

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

§ 65-130-520 Mixing Zone Characteristics

An allowable mixing zone shall be defined by all or some of the following characteristics: receiving water; discharge location; volume flow rate of discharge; specific linear dimensions; area or volume; mixing velocities and other pertinent hydrologic biological, chemical, and physical characteristics.

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

§ 65-130-525 Criteria for Mixing Zone

The following criteria shall be met in determining the location, size, shape, out-fall design and in-zone quality of mixing zones.

- (a) Mixing zones shall be used solely for mixing of the discharge in Commonwealth or state waters. Mixing within the zone must be achieved as quickly as possible through the use of a diffuser or other apparatus that insures the discharge is mixed within the allocated dilution water in the smallest practicable area.
- (b) A mixing zone may have a sub area within the immediate vicinity of the discharge point termed a zone of initial dilution (ZID).
- (c) The concentrations of toxic pollutants at or beyond the limit of the zone of initial dilution shall not exceed the acute aquatic life water quality criteria of § 65-130-450. The dimensions of the zone of initial dilution must be such that lethality to organisms passing through the zone of initial dilution is prevented.
- (d) At the boundary of the mixing zone the water shall comply with the water quality standards set forth for the water classification in these regulations.
- (e) Where two or more mixing zones are in proximity to each other, mixing zones shall be defined so that a continuous zone of passage for aquatic life is available.
- (f) For the protection of aquatic life resources, including species listed as threatened or endangered under Section 4 of the Endangered Species Act, a mixing zone cannot be used for, or considered as, a substitute for waste treatment.

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- (g) Chronic aquatic life and human health criteria apply at and beyond the boundary of the zone of mixing.
- (h) Mixing zones shall not be allowed in Commonwealth or state waters with insufficient currents available for dispersion of pollutants.
- (i) Mixing zones shall be limited in extent as practicable, and dimensions shall be established through the application of a publicly available or proprietary plume dispersion model, as approved by BECQ.
- (j) All discharges to marine waters will comply with the ocean discharge criteria promulgated under § 403(c) of the CWA.

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

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: The 1991 amendments moved former § 9.4 to subsection (a) of this section, the opening paragraph of former § 9.1 to subsection (b), former § 9.2 to subsection (d), and former § 9.3 to subsection (e), and deleted former § 9.5. See 5 Com. Reg. at 1949 (Mar. 31, 1983); 8 Com. Reg. at 4470 (Aug. 15, 1986); 13 Com. Reg. at 8327-28 (Nov. 15, 1991).

The 1997 amendments deleted former subsections (c), (d), (f) and (j), redesignated the remaining subsections accordingly, and amended the opening paragraph and subsections (a), (b) and (f).

The 2004 amendments amended the opening paragraph and subsections (b), (e) and (f). The 2014 amendments amended all subsections.

§ 65-130-530 Dredging and Discharge of Dredged or Fill Material

- (a) Dredging and dredged spoil discharges generally result in short-term disruption and do not represent continuous discharge that will affect beneficial uses over a long term. Other in-water, construction-related activities, such as discharge from the dewatering of excavations and shoreline stabilization projects, can also cause short-term suspension of sediments similar to that caused by dredge and fill discharges. Mixing zones may therefore be granted for dredging activities, other in-water construction-related activities, and the discharge of dredged or fill material provided that:
 - (1) All other requirements of this part are met; and
 - (2) The proposed activity satisfies the anti-degradation requirements described in § 65-130-010 of this chapter.

(b)(1) Dredging and the discharge of dredged or fill material can adversely affect colonies of reef building organisms by burying them, by releasing contaminants such as

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hydrocarbons into the water column, by reducing light penetration through the water, and by increasing the level of suspended particulates. Coral organisms are extremely sensitive to even slight reductions in light penetration or increases in suspended particulates (i.e., turbidity). These adverse effects will cause a loss of productive colonies which in turn provide habitat for many species of highly specialized aquatic organisms.

(2)(i) Dredging and the discharge of dredged or fill material can also adversely affect sea grass beds, by smothering vegetation and benthic organisms, and may also create unsuitable conditions for their continued vigor by:

- (A) Changing water circulation patterns;
- (B) Releasing nutrients that increase undesirable algal populations;
- (C) Releasing chemicals that adversely affect plants and animals;
- (D) Increasing turbidity levels, thereby reducing light penetration and hence photosynthesis; and
- (E) Changing the capacity of a vegetated shallow to stabilize bottom materials and decrease channel shoaling.

(ii) Dredging and the discharge of dredged or fill material may reduce the value of vegetated shallows as nesting, spawning, nursery, cover, and forage areas, as well as their value in protecting shorelines from erosion and wave actions. It may also encourage the growth of nuisance vegetation.

(3) In granting mixing zones for dredging activities, the discharge of dredged or fill material, or other in-water, construction-related activities that cause the suspension of sediments in or near coral reef resources and sea grass beds, the Administrator shall assure that any disruption to beneficial uses is kept to as absolute minimum, and that all practicable measures are taken to prevent adverse impacts to resources of concern, taking into consideration the magnitude and duration of the proposed activity, and the proximity to resource of concern. This shall be satisfied by placing conditions within the applicable permit or water quality certification requiring the following:

(i) The use and maintenance of BMPs including such measures as “silt curtains,” closed (“environmental”) buckets, hydraulic dredges, or other methods as appropriate to control the drift and extent of suspended sediment plumes beyond the location of the dredge or fill activity;

(ii) Water quality monitoring requirements for turbidity and other pollutants of concern that may be identified or expected in the dredge spoil or fill material. Periodic aquatic ecosystem monitoring may also be required for the purpose of assessing the effects of the activity on resources of concern and determining the necessity of additional mitigative measures;

(iii) For activities which have the potential to adversely affect coral reproduction, a stoppage period starting around the June or July full moon (to be determined by BECQ), is required. The stoppage period, if determined to be applicable, shall be no less than twenty one calendar days. In determining whether an activity has the potential to affect coral spawning, BECQ shall consider all of the following:

- (A) The magnitude of the sediment plume generated by the proposed activity;
- (B) The most likely extent and directions of drift of the sediment plume;
- (C) The type of sediment and its composition; and
- (D) The proximity of broadcast spawning coral species to the proposed activity and expected sediment plume.

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(iv) A specified distance up-current and down-current from the permitted activity at which applicable water quality criteria must be met (i.e., a mixing zone). Mixing zones for dredge and fill activities shall be kept as small as practicable, and shall not exceed 300 feet down-current and 150 feet upcurrent. Down-current distance maybe increased to up to 600 feet where typical currents can be shown to make the use of BMPs ineffective;

(v) Any additional protective measures, limitations, monitoring or mixing zone requirements that the Administrator identifies as being necessary to protect resources of concern.

(c) The Administrator may require an applicant for a water quality certification or permit for dredging, the discharge of dredged or fill material, or similar in-water, construction-related activities, to provide information necessary to support the development of monitoring plans, mitigation measures, or mixing zone requirements, such as surveys of existing currents, water quality data, and baseline aquatic ecosystem and indicator species surveys.

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

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004).

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

In subsection (b)(2)(i), the Commission moved the comma after “curtains” inside of the closing quotation mark.

Part 600 - Water Quality Certification

§ 65-130-601 Water Quality Certification Required

A water quality certification is required by the CWA § 401 of any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into waters of the United States. The BECQ shall issue a water quality certification for any proposed activity which:

- (a) Complies with the applicable provisions of the CWA §§ 301, 302, 303, 306, and 307;
- (b) Complies with applicable provisions of the CNMI Water Quality Standards;
- (c) Will not interfere with the attainment or maintenance of the existing or designated use of the Commonwealth or state waters; and all appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on aquatic life and human health.

Modified, 1 CMC § 3806(d), (f).

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History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

Commission Comment: This section was originally an introduction to part 600. The Commission created the section title.

The 1991 amendments added a new part 10, entitled “Water Quality Certification,” and redesignated the then-existing parts accordingly. The 1997 amendments amended the opening paragraph and subsection (d). The 2004 amendments amended subsection (c).

§ 65-130-605 Application for Water Quality Certification

(a) Applicants for water quality certification shall submit a completed, signed application, which shall include the following:

- (1) The name and address of the applicant(s);
- (2) A description of the proposed facility or activity, and of any discharge into Commonwealth or state waters which may result from the conduct of any activity including, but not limited to, the construction or operation of the facility. This description shall include the characteristic of the discharge, and the location or locations at which such discharge may enter Commonwealth or state waters;
- (3) If applicable, a description of the function and operation of equipment or facilities to control discharges, including specification of the methods of control to be used;
- (4) The estimated date or dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;
- (5) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharge.

(b) The Administrator may require the submission of additional information after a certification application has been filed. If a certification application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency. The Administrator shall notify the applicant, in writing, within thirty calendar days of the submission of an application, if an application is incomplete or otherwise deficient. For applications which are eligible for waiver of certification under § 65-130-615(g), the Administrator shall notify the applicant within fourteen calendar days if an application is incomplete or otherwise deficient. A description of the type of additional information necessary to complete the application or correct the deficiency will be included with such a written notice. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of certification.

(c) The applicant is required to notify BECQ, in writing, of changes which may affect the application and certification process.

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(d) The applicant will be informed, in writing, by the Administrator when a certification application is considered complete. The Administrator shall act on a request for certification within a period which shall not exceed six months.

(e)(1) Applicants for water quality certifications shall pay a filing fee. Filing fees for water quality certification are dependent on the type of federal permit, the scale of the proposed activity, and its potential to affect water quality:

(i) Any commercial activity that will result in either the generation of an excess of 5000 gallons of wastewater per day, any clearing of 1000 square meters or filling exceeding 1000 cubic meters in waters of the CNMI, or any other large scale development as determined by the Administrator shall pay a fee of \$5000.

(ii) Any commercial activity requiring a 401 water quality certification that will result in either the generation of less than 5000 gallons of wastewater per day or any clearing less than 1000 square meters or filling in waters of the CNMI that is less than 1000 cubic meters shall pay a fee of \$1000.

(iii) Any small family residential activity requiring a 401 water quality certification resulting in a clearing that does not exceed 1000 square meters is required to obtain a water quality certification and shall pay a fee of \$100. Any residential activity exceeding 1000 square meters must pay an additional fee of \$5 per 100 square meters or fraction thereof.

(iv) Any permit for which certification is sought that falls under a “nationwide permit” issued under Section 404 of the CWA and for which certification may be waived as allowed under § 65-130-615(g) shall pay a filing fee of \$100.

(2) This filing fee shall be submitted prior to the issuance of a public notification and shall not be refunded nor applied to any subsequent water quality certification following final action or denial of a water quality certification. Any federal or CNMI government agency shall be exempt from paying filing fees.

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

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

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

The 1997 amendments added new subsection (e)(1) and amended the opening paragraph and subsections (b), (d) and (e)(2).

The 2004 amendments amended subsections (a), (a)(2), (b), (e)(1), (e)(1)(i) and (e)(2) and added new subsection (e)(1)(iv).

In subsections (a)(5), (b), (c) and (d), the Commission changed the final semi-colon to a period. In subsection (d), the Commission deleted the final word “and.” The Commission corrected the spelling of the word “filing” in subsection (e)(1)(iv) pursuant to 1 CMC § 3806(g).

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§ 65-130-610 Public Notification and Public Hearing

(a) Within five calendar days after determining an application to be complete, and after the appropriate filing fee has been received, BECQ shall transmit a draft public notification to the applicant for review. The notice shall include the name and address of the applicant, and a brief description of the activity and of the discharge involved in the activity for which certification is being sought.

(b) The applicant shall review the draft notice upon receipt, and within five calendar days, provide comments to BECQ in writing regarding any changes the applicant believes to be necessary. If BECQ does not receive any written comments from the applicant after five calendar days, the public notice shall be deemed final, and BECQ shall notify the applicant to publish the notice as specified below under subsection (c). Otherwise, BECQ shall prepare the final public notice, taking into consideration comments received from the applicant, and transmit the final public notice to the applicant within five calendar days for publication.

(c) Publication of the notice shall be the responsibility of the applicant. The notice shall be published once in a minimum of two newspapers, one of which has a daily circulation, and a second time in at least one newspaper prior to the completion of the public comment period.

(d) The public comment period shall be for at least 30 days from the date of the first publication of the notice. The Administrator may, upon request, provide the opportunity for public hearing(s) to consider issuance of a water quality certification. The Administrator shall inform the applicant, in writing, that such action has been taken.

Modified, 1 CMC § 3806(c), (e).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

Commission Comment: The 1997 amendments added subsection (b) and amended the opening paragraph and subsection (c). The 2004 amendments completely revised this section.

§ 65-130-615 Determination of Water Quality Certification

(a) The Administrator shall make a determination on a water quality certification based upon evaluation of:

- (1) The application made by the applicant to the licensing or permitting agency and the information contained in such application which is relevant to water quality considerations,
- (2) The application materials submitted pursuant to § 65-130-605,
- (3) Comments received during the public comment period,

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- (4) The record of a public hearing held pursuant to § 65-130-610, and
 - (5) Any other information and data that the Administrator deems relevant.
- (b) BECQ shall not grant a water quality certification for any activity unless the activity has been determined to be consistent with anti-degradation policy through the satisfaction of all applicable provisions contained in § 65-130-010 of this chapter.
- (c) The contents of the water quality certification issued by BECQ shall include:
- (1) The name and address of the applicant
 - (2) Reference to the application materials which were evaluated in making the certification, identified by date received, and federal license and permit application number or code where applicable,
 - (3) A statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards,
 - (4) A statement (or statements) detailing how the activity has been determined to be consistent with the anti-degradation policy in accordance with § 65-130-010(b).
 - (5) A statement of any conditions which the Administrator deems necessary with respect to the discharge or the activity, including the conditions specified under § 65-130-530 for dredge and fill activities, and
 - (6) Any such other information as the Administrator may determine to be appropriate.
- (d) If the Administrator, after considering the information submitted pursuant to subsection (a), determines that there is reasonable assurance that applicable water quality standards will not be violated, and the proposed methods of control will be applied to a discharge which is the result of any activity including, but not limited to, the construction and operation of facilities, then the Administrator shall so certify.
- (e) The Administrator may modify the certification prior to the issuance of the federal license or permit, after consideration of information presented by the applicant licensing or permitting agency or other government agencies or interested parties.
- (f) If the Administrator fails to act on a completed application for certification within six months, then the certification requirements of this section shall be waived with respect to federal applications.
- (g) If the discharge in question is the result of one of the activities which receives a nationwide permit for the discharge of dredge and fill materials, thereby fulfilling specific conditions of that permit pursuant to 33 CFR §§ 330.5 and 330.6, then the Administrator will determine, on a case-by-case basis, which projects are considered to be minor and non-controversial. Certification requirements of this section shall be waived for minor and non-controversial activities within six months of the receipt of a completed application. The Administrator may elect to specify conditions under which any such waiver is valid.
- (h)(1) Storm water discharges associated with industrial and construction site activities, as described in 40 CFR part 122.26, covered under a United States

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Environmental Protection Agency, National Pollutant Discharge Elimination System (NPDES) General Permit, may be allowed provided the following conditions are met:

- (i) A BECQ section 401 water quality certification has been issued to the United States Environmental Protection Agency for the particular NPDES general permit associated with the discharge;
- (ii) All conditions and requirements set forth in the applicable United States Environmental Protection Agency, Final National Pollutant Discharge Elimination System (NPDES) General Permits are complied with;
- (iii) A storm water pollution prevention plan for storm water discharges associated with industrial activities or from construction sites is approved by the Administrator of BECQ prior to submission of the notice of intent (NOI), EPA form 3510-6. For facilities with current storm water discharges associated with industrial activities, a storm water plan is submitted within thirty calendar days of adoption of this chapter;
- (iv) A NOI to be covered by the general permit for discharges associated with industrial activities or for discharges from construction activities is submitted to BECQ and USEPA, Region IX, accompanied by a pollution prevention plan approval letter from BECQ;
- (v) The NOI is postmarked seven calendar days prior to any storm water discharges and a copy is submitted to the Administrator of BECQ no later than seven calendar days prior to any storm water discharges; and
- (vi) All monitoring reports required by the respective general storm water permits are submitted to BECQ.

(2) Based on a review of the NOI and/or other information made available to the Administrator, the Administrator may deny coverage under this general permit and require submittal of an application for an individual NPDES permit to EPA. An individual water quality certification from BECQ will be required for this individual permit.

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

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

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

The 1993 amendments added new subsections (h) and (i). The 1997 amendments readopted and republished this section in its entirety with numerous amendments. The 2004 amendments amended numerous provisions.

§ 65-130-620 Water Quality Certification; General Provisions

(a) Where any facility or activity has received certification pursuant to § 65-130-615 in connection with the issuance of a license or permit for construction, and where such facility or activity is not required to obtain an operating license or permit, the

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Administrator, prior to the operation of such facility or activity, shall be afforded the opportunity to perform an initial inspection of such facility or activity for the purpose of determining if the manner in which such facility or activity will be operated or conducted will violate applicable water quality standards.

(b) If the Administrator, after the initial inspection pursuant to subsection (a) determines that operation of the proposed facility or activity will violate applicable water quality standards, the Administrator shall so notify the applicant and the licensing or permitting agency.

(c) Where a licensing or permitting agency suspends a license or permit after receiving the Administrator's notice and recommendation pursuant to section § 65-130-615, the applicant may submit evidence to the Administrator, showing that the facility or activity has been modified so as not to violate applicable water quality standards. If the Administrator determines that the applicable water quality standards will not be violated, the Administrator shall so notify the licensing or permitting agency.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

Commission Comment: The 1997 amendments readopted and republished this section with numerous amendments. The 2004 amendments amended subsection (c) and deleted former subsection (d).

§ 65-130-625 Water Quality Certification; Adoption of New or Revised Water Quality Standards

(a) To the extent permitted by applicable law, all water quality certifications issued by BECQ shall require the licensing or permitting authority to include a clause in the license or permit advising the licensee or permittee that the license or permit shall be subject to amendment or modification upon adoption or revision of water quality standards.

(b) Upon adoption or revision of water quality standards, BECQ shall notify the licensing or permitting authority and the licensee or permittee of the revised or newly-enacted water quality standards and shall request the licensing or permitting authority to amend or modify the license or permit, if and to the extent permitted by applicable law, to reflect the applicable water quality standards.

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

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Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The 2004 amendments amended subsection (a).

Part 700 - Land Disposal of Wastewater

§ 65-130-701 General Applicability

Any action or activity that results in the disposal of wastewater on land in excess of fifty-five gallons per day requires the approval of the Administrator of BECQ. Types of wastewater and pollutants discharges that need approval prior to land disposal include but are not limited to reverse osmosis brine and oil/water separator discharges.

(a) The disposal of wastewater through an injection well is excluded as this activity is regulated under the CNMI Underground Injection Control (UIC) Regulations [NMIAC, title 65, chapter 90].

(b) Nothing in these requirements shall be construed as to supersede the wellhead protection area requirements under the CNMI Well Drilling and Well Operations Regulations [NMIAC, title 65, chapter 140], or to allow the construction of any facility or any activity within the setback distances contained therein.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

Commission Comment: The 1997 amendments added a new part 11, entitled “Land Disposal of Wastewater” and redesignated the remaining parts accordingly. The 2004 amendments amended the opening paragraph and subsection (a) and added subsection (c). The 2014 amendments removed former subsection (a). The Commission corrected the spelling of the word “supersede” in subsection (b) pursuant to 1 CMC § 3806(g).

§ 65-130-705 Submission of Land Disposal Plans

Prior to the land disposal of any wastewater or other pollutants in excess of fifty-five gallons per day, the Administrator of BECQ will review the plan for disposal and make a determination that coastal waters or ground water will not be adversely affected by such disposal.

(a) The plan for the land disposal shall include the following items:

- (1) Name, address, and phone number of applicant;
- (2) Description of the physical process that produces the wastewater, chemical make-up of wastewater, and average volume produced on a daily and annual basis;
- (3) Map of disposal site which identifies elevation, nearby landmarks, and proposed point of discharge;

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(4) Schematic of proposed land disposal method (e.g. percolation trench, ponding basin, leachfield, infiltrator) to be used;

(5) In the event that a land disposal plan requires seepage as a mechanism for the removal of fluids, the applicant must perform a percolation test on the proposed site and submit the results to the Administrator of BECQ.

(b) The applicant must pay a \$500 filing fee for all land disposal plans that are submitted to the BECQ for review.

(1) This fee will be waived for projects that have applied for a CWA § 401 water quality certification.

(2) All government agencies shall be exempt from paying this fee.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

Commission Comment: In subsection (a)(5), the Commission changed “require” to “requires” to correct a manifest error. The 2004 amendments added subsection (a)(5).

§ 65-130-710 Land Disposal in Coastal Lands

Land disposal in coastal lands is defined as disposal of wastewaters within one hundred fifty feet of the mean high water mark of the shoreline. Any wastewater to be land disposed on coastal lands must meet CNMI Water Quality Standards.

Modified, 1 CMC § 3806(d), (e).

History: Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

§ 65-130-715 Land Disposal in Groundwater Recharge Areas

Land areas other than coastal lands are defined as groundwater recharge areas. The applicant must provide a determination of the underlying geology, aquifer characteristics, groundwater quality, location and proximity of all nearby wells, and current and potential future use of the underlying groundwater for public water supply based on a review of available information including United States Geological Survey (USGS) maps and reports, Commonwealth Utilities Corporation (CUC) well field maps, and the nearby well drilling records. BECQ may assist the applicant in making such determinations where sufficient information exists. The applicant may provide a determination on the basis of a report from a professional hydrogeologist. Groundwater recharge areas are further divided into three subcategories:

(a)(1) Primary groundwater recharge zones are defined as:

(i) Areas designated as class I groundwater management zones in the CNMI Well Drilling and Well Operations Regulations [NMIAC, title 65, chapter 140];

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(ii) Areas contributing surface infiltration to a geologic formation that is saturated with fresh ground water that is not in contact with seawater (i.e. “perched” groundwater) and is capable of transmitting quantities of fresh water in sufficient quantity to sustain a public water supply well;

(iii) Areas that can reasonably be considered, on the basis of maps provided by USGS or CUC, to be within active or future public water supply well fields;

(iv) Areas contributing surface infiltration to a geologic formation that discharges to a known spring or stream that currently is or is capable of transmitting quantities of fresh water in sufficient quantity to be used as a public water supply;

(v) Within four hundred feet laterally upgradient from a public water supply well; or

(vi) Within two hundred feet laterally downgradient from a public water supply well.

(2) Areas which do not meet any of the criteria for definition as a primary groundwater recharge zone as described in subsection (a)(1) shall be classified as either a secondary groundwater recharge zone, or a brackish groundwater recharge zone.

(b) Secondary groundwater recharge zones are defined as areas designated as class II groundwater management zones by the CNMI Well Drilling and Well Operations Regulations [NMIAC, title 65, chapter 140]; areas contributing surface infiltration to a geologic formation that is saturated with groundwater with less than 500 parts per million total dissolved solids, and currently or* are capable of transmitting quantities of water in sufficient quantity to sustain a public water supply well; or areas with groundwater surface elevations equal to or greater than 1 foot as mapped by USGS.

(c) Brackish groundwater recharge zones are defined as areas designated as class III groundwater management zones by the CNMI Well Drilling and Well Operations Regulations [NMIAC, title 65, chapter 140]; areas contributing surface infiltration to a geologic formation that is saturated with brackish groundwater with greater than 500 part per million total dissolved solids; or areas with groundwater surface elevations less than 1 foot as mapped by USGS.

* So in original.

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

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

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

The 2004 amendments amended all subsections and replaced the former subsections (a)(1)(i) through (a)(1)(iii) with the new (a)(1)(i) through (a)(1)(iv). The 2014 amendments added subsections (a)(i)(v) and (a)(i)(vi).

In subsections (a)(1)(vi) and (a)(2), the Commission changed the final colons to periods. In subsection (a)(2), the Commission corrected the spelling of “described.”

§ 65-130-720 Discharge Limitations for Land Disposal of Wastewater

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(a) Discharge limitations for wastewater intended to be land disposed in groundwater recharge areas are dependent on the subcategory of groundwater recharge area and volume of wastewater to be disposed.

(b) Wastewater that is to be land disposed in primary groundwater recharge zones must meet drinking water standards as set in CNMI Drinking Water Regulations [NMIAC, title 65, chapter 20].

(c) Discharge limitations for water quality to be land disposed in secondary groundwater recharge zones and brackish groundwater recharge zones are dependent on volume of wastewater. Specific criteria for discharge limitations will be determined on a case-by-case basis and authorized in the permit.

History: Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

Commission Comment: The 1997 regulation consisted of the current subsections (b) and (c). The 2004 amendment inserted current subsection (a) and re-designated the other subsections accordingly.

Part 800 - Prohibitions

§ 65-130-801 Prohibitions

It is prohibited to violate any water quality standard or water quality regulation promulgated by BECQ, or to fail to comply with the terms of a Water Quality Certification issued by BECQ. Any person who violates the regulations, causes a violation of the Water Quality Standards, or fails to comply with the terms of a Water Quality Certification, is subject to an enforcement action in accordance with Part 1000.

History: Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014).

Commission Comment: The 2014 amendments added this section and re-designated the former part 800 as part 900.

Part 900 - Inspections and Right of Entry

§ 65-130-901 Inspections and Right of Entry

In accordance with 2 CMC § 3132, the Administrator or his authorized representative may inspect any facility or records subject to the provisions of the Act and the regulations in this chapter. The inspection may be conducted with or without advance notice, as authorized by 2 CMC § 3132.

Modified, 1 CMC § 3806(d).

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History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004).

Commission Comment: The 2004 amendments deleted former part 12, sections 12.1 through 12.4, entitled “Inspections and Right of Entry” and replaced them with this section. See 19 Com. Reg. 14908 (Jan. 15, 1997); 18 Com. Reg. 14388 (Oct. 15, 1996); 15 Com. Reg. 11015 (Oct. 15, 1993); 15 Com. Reg. 10833 (Sept. 15, 1993). The 2014 amendments re-designated this part from part 800 to part 900.

Part 1000 - Notices of Violations, Administrative Orders, and Penalties

§ 65-130-1001 Power to Uphold Water Quality Standards

The Division is responsible for enforcement of the regulations in this chapter in accordance with the applicable laws of the CNMI and the CWA and its amendments. Where Commonwealth or state waters designated for recreational use fall below the CNMI water quality standards as set forth in this chapter, the Administrator shall have the authority to suspend public use of Commonwealth or state waters or take other action which in the Administrator’s discretion is necessary to protect the public health, safety, and welfare.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Commission Comment: The 1993 amendments redesignated this part as part 12 and added §§ 12.1 through 12.7 to former part 11, entitled “Enforcement.” See 13 Com. Reg. at 8332-33 (Nov. 15, 1991); 15 Com. Reg. at 11024-26 (Oct. 15, 1993). The 1997 amendments readopted and republished this part in its entirety with numerous revisions. The 2014 amendments re-designated this part from part 900 to part 1000.

The August 1983 amendments added a new part 12, entitled “Unlawful Discharge.” See 5 Com. Reg. at 2455 (Aug. 31, 1983). The 1986 amendments deleted this part.

The Commission inserted a comma after the word “safety” pursuant to 1 CMC § 3806(g).

§ 65-130-1005 Enforcement Actions

In accordance with 2 CMC § 3131, if the Administrator has reason to believe a violation of the provisions of the Act, the standards in this chapter, and/or the terms of any water quality certification, waiver of water quality certification, or land disposal approval issued pursuant to the Act and these standards, has occurred or is occurring, the Administrator may issue any necessary order to enforce the aforementioned provisions and conditions. Such order shall be in the form of a written warning, notice of violation, cease and desist order, or administrative order signed by the Administrator or his

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authorized representative and shall provide notice of the facts constituting the violation, penalties that may be imposed, and, where appropriate, provide a reasonable time frame in which to take corrective action.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

Commission Comment: The 2004 amendments completely revised and readopted this section.

§ 65-130-1010 Administrative Orders

If any person subject to an order issued pursuant to § 65-130-1005 fails to comply with the order, the Administrator 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 particular sections of the Act, standards, water quality certification, waiver of water quality certification, or land disposal approval involved, the proposed penalty including any proposed suspension, revocation, or modification of any water quality certification, waiver of water quality certification, or land disposal approval, and monetary penalties including any penalty for cost of corrective action taken by the Division, and 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.

Modified, 1 CMC § 3806(c), (d), (f).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

Commission Comment: The 2004 amendments completely revised and readopted this section.

§ 65-130-1015 Hearings

(a) Any person subject to an order imposing penalties pursuant to § 65-130-1010, may request, in writing, a hearing before the Administrator or his/her designee. Request for a hearing shall be served upon the Administrator within seven calendar days from receipt of the order. 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.

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

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

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History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

Commission Comment: In subsection (b), the Commission changed “Procedures” to “Procedure” to correct a manifest error.

The 2004 amendments completely revised and readopted this section. The 2004 amendments deleted former section 13.4, entitled “Settlement.” See 19 Com. Reg. 14908 (Jan. 15, 1997); 18 Com. Reg. 14388 (Oct. 15, 1996); 15 Com. Reg. 11015 (Oct. 15, 1993); 15 Com. Reg. 10833 (Sept. 15, 1993).

§ 65-130-1020 Emergency Suspension Provisions

If the Administrator determines that a violation of a water quality certification, waiver of water quality certification, or land disposal approval issued pursuant to the Act and the standards in this chapter has resulted in an imminent threat to public health, safety or welfare, the Administrator may summarily suspend a water quality certification, waiver of water quality certification, or land disposal approval. A hearing for revocation or other action shall be promptly instituted and determined pursuant to the procedures in § 65-130-1015.

Modified, 1 CMC § 3806(c), (d).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004).

Commission Comment: The 2004 amendments deleted former sections 13.6 through 13.9. See 19 Com. Reg. 14908 (Jan. 15, 1997); 18 Com. Reg. 14388 (Oct. 15, 1996); 15 Com. Reg. 11015 (Oct. 15, 1993); 15 Com. Reg. 10833 (Sept. 15, 1993).

§ 65-130-1025 Criminal Penalties

Any person who knowingly and willfully commits any act in violation of the Act, these standards, or any water quality certification, waiver of certification, or land disposal approval, may be subject to criminal penalties as set forth in 2 CMC § 3131(d).

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004).

Part 1100 - Miscellaneous Provisions

§ 64-130-1101 Severability

If any provision of these regulations or their application is held to be invalid, such invalidity shall not affect any other provision or application that can be used without the

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invalid section, and to this end the provisions of these regulations and their various applications are declared to be severable.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986).

Appendix 1
Water Quality Standards Program History, Statutory Authority, and Other
Background Information

Definition and Purpose of Water Quality Standards

[The following is reprinted directly from the U.S. Environmental Protection Agency web pages at UTL: <http://www.epa.gov/ost/standards/> as accessed on 01 February 2014.]

Water quality standards are the foundation of the water quality-based control program mandated by the Clean Water Act. Water Quality Standards define the goals for a water body by designating its uses, setting criteria to protect those uses, and establishing provisions to protect water quality from pollutants. A water quality standard consists of four basic elements:

- (1) *designated uses* of the water body (e.g., recreation, water supply, aquatic life, agriculture),
- (2) *water quality criteria* to protect designated uses (numeric pollutant concentrations and narrative requirements),
- (3) an *antidegradation policy* to maintain and protect existing uses and high quality waters, and
- (4) *general policies* addressing implementation issues (e.g., low flows, variances, mixing zones).

Designated Uses: The water quality standards regulation requires that States and authorized Indian Tribes specify appropriate water uses to be achieved and protected. Appropriate uses are identified by taking into consideration the use and value of the water body for public water supply, for protection of fish, shellfish, and wildlife, and for recreational, agricultural, industrial, and navigational purposes. In designating uses for a water body, States and Tribes examine the suitability of a water body for the uses based on the physical, chemical, and biological characteristics of the water body, its geographical setting and scenic qualities, and economic considerations. Each water body does not necessarily require a unique set of uses. Instead, the characteristics necessary to support a use can be identified so that water bodies having those characteristics can be grouped together as supporting particular uses.

Where water quality standards specify designated uses less than those which are presently being attained, the State or Tribe is required to revise its standards to reflect the uses actually being attained.

A use attainability analysis must be conducted for any water body with designated uses that do not include the “fishable/swimmable” goal uses identified in the section 101(a)(2) of the Act. Such water bodies must be reexamined every three years to determine if new information has become available that would warrant a revision of the standard. If new information indicates that “fishable/swimmable” uses can be attained, such uses must be designated.

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Water Quality Criteria: States and authorized Tribes adopt water quality criteria with sufficient coverage of parameters and of aBECQuate stringency to protect designated uses. In adopting criteria, States and Tribes may:

- * adopt the criteria that EPA publishes under § 304(a) of the Clean Water Act;
- * modify the § 304(a) criteria to reflect site-specific conditions; or
- * adopt criteria based on other scientifically-defensible methods.

States and Tribes typically adopt both numeric and narrative criteria. Numeric criteria are important where the cause of toxicity is known or for protection against pollutants with potential human health effects. Narrative criteria are also important – narrative “free from” toxicity criteria typically serve as the basis for limiting the toxicity of waste discharges to aquatic species (based on whole effluent toxicity testing).

Section 303(c)(2)(B) of the Clean Water Act requires States and authorized Tribes to adopt numeric criteria for § 307(a) priority toxic pollutants for which the Agency has published § 304(a) criteria, if the discharge or presence of the pollutant can reasonably be expected to interfere with designated uses. The § 307(a) list contains 65 compounds and families of compounds, which the Agency has interpreted to include 126 priority toxic pollutants.

In addition to narrative and numeric (chemical-specific) criteria, other types of water quality criteria include:

biological criteria: a description of the desired aquatic community, for example, based on the numbers and kinds of organisms expected to be present in a water body

nutrient criteria: a means to protect against nutrient over-enrichment and cultural eutrophication

sediment criteria: a description of conditions that will avoid adverse effects of contaminated and uncontaminated sediments

Antidegradation Policy: Water quality standards include an antidegradation policy and implementation method. The water quality standards regulation requires States and Tribes to establish a three-tiered antidegradation program.

Tier 1 maintains and protects existing uses and water quality conditions necessary to support such uses. An existing use can be established by demonstrating that fishing, swimming, or other uses have actually occurred since November 28, 1975, or that the water quality is suitable to allow such uses to occur. Where an existing use is established, it must be protected even if it is not listed in the water quality standards as a designated use. Tier 1 requirements are applicable to all surface waters.

Tier 2 maintains and protects “high quality” waters — water bodies where existing conditions are better than necessary to support CWA § 101(a)(2) “fishable/swimmable”

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uses. Water quality can be lowered in such waters. However, State and Tribal Tier 2 programs identify procedures that must be followed and questions that must be answered before a reduction in water quality can be allowed. In no case may water quality be lowered to a level which would interfere with existing or designated uses.

Tier 3 maintains and protects water quality in outstanding national resource waters (ONRWs). Except for certain temporary changes, water quality cannot be lowered in such waters. ONRWs generally include the highest quality waters of the United States. However, the ONRW classification also offers special protection for waters of exceptional ecological significance, i.e., those which are important, unique, or sensitive ecologically. Decisions regarding which water bodies qualify to be ONRWs are made by States and authorized Indian Tribes.

Antidegradation implementation procedures identify the steps and questions that must be addressed when regulated activities are proposed that may affect water quality. The specific steps to be followed depend upon which tier or tiers of antidegradation apply.

General Policies: States and Tribes may adopt policies and provisions regarding water quality standards implementation, such as mixing zone, variance, and low-flow policies. Such policies are subject to EPA review and approval.

Mixing Zones: States and Tribes may, at their discretion, allow mixing zones for point source discharges. A mixing zone is a defined area surrounding or downstream of a point source discharge where the effluent plume is progressively diluted by the receiving water and numeric criteria otherwise applicable to the segment may be exceeded. Mixing zone procedures describe the methodology for determining the location, size, shape, and in-zone quality of mixing zones.

Variations: As an alternative to removing a designated use, a State or Tribe may wish to include a variance as part of a water quality standard. Variations temporarily relax a water quality standard. They are subject to public review every three years, and may be extended upon expiration. A variance may specify an interim water quality criterion which is applicable for the duration of the variance. Variations can help to assure that further progress toward improving water quality is achieved.

Low Flows: State and Tribal water quality standards may identify policies and procedures to be applied in determining critical low flow conditions. Such procedures are applied, for example, when calculating discharge permit requirements to be included in National Pollutant Discharge Elimination System (NPDES) permits.

Statutory Authority and History

Statutory History

The first comprehensive legislation for water pollution control was the Water Pollution Control Act of 1948 (Pub. L. 845, 80th Congress). This law adopted principles of state

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and federal cooperative program development, limited federal enforcement authority, and limited federal financial assistance. These principles were continued in the Federal Water Pollution Control Act (Pub. L. 660, 84th Congress) in 1956 and in the Water Quality Act of 1965. Under the 1965 Act, States were directed to develop water quality standards establishing water quality goals for interstate waters. By the early 1970's, all the States had adopted such water quality standards. Since then, States have revised their standards to reflect new scientific information, the impact on water quality of economic development and the results of water quality controls.

Due to enforcement complexities and other problems, an approach based solely on water quality standards was deemed insufficiently effective. In the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500, Clean Water Act or CWA), Congress established the National Pollutant Discharge Elimination System (NPDES) whereby each point source discharger to waters of the U.S. is required to obtain a discharge permit. The 1972 Amendments require EPA to establish technology based effluent limitations that are to be incorporated into NPDES permits. In addition, the amendments extended the water quality standards program to intrastate waters and required NPDES permits to be consistent with applicable state water quality standards. Thus, the CWA established complementary technology-based and water quality-based approaches to water pollution control.

Water quality standards serve as the foundation for the water-quality based approach to pollution control and are a fundamental component of watershed management. Water quality standards are State or Tribal law or regulation that: define the water quality goals of a water body, or segment thereof, by designating the use or uses to be made of the water; criteria necessary to protect the uses; and protect water quality through antidegradation provisions. States and Tribes adopt water quality standards to protect public health or welfare, enhance the quality of water, and serve the purposes of the Act. "Serve the purposes of the Act" (as defined in Sections 101 (a), 101 (a)(2), and 303(c) of the Act) means that water quality standards should: 1) include provisions for restoring and maintaining chemical, physical, and biological integrity of State waters, 2) provide, wherever attainable, water quality for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water ("fishable/swimmable"), and 3) consider the use and value of State waters for public water supplies, propagation of fish and wildlife, recreation, agricultural and industrial purposes, and navigation. See 40 CFR 131.2.

Section 303(c) of the CWA establishes the basis for the current water quality standards program. Section 303(c):

1. Defines water quality standards;
2. Identifies acceptable beneficial uses: propagation of fish, shellfish and wildlife, public, agricultural, industrial water supplies and navigation;
3. Requires that State and Tribal standards protect public health or welfare, enhance the quality of water and serve the purposes of the Act;
4. Requires that States and Tribes review their standards at least every three years;

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5. Establishes the process for EPA review of State and Tribal standards, including where necessary the promulgation of a superseding Federal rule in cases where a State's or Tribe's standards are not consistent with applicable requirements of the CWA or in situations where the Administrator determines that Federal standards are necessary to meet the requirements of the Act.

The decade of the 1970's saw State and EPA attention focus on creating the infrastructure necessary to support the NPDES permit program and development of technology-based effluent limitations. While the water quality standards program continued, it was a low priority in the overall CWA program. In the late 1970's and early 1980's, it became obvious that greater attention to the water quality-based approach to pollution control was needed to effectively protect and enhance the nation's waters.

The first statutory evidence of this was the enactment of a CWA requirement that after December 29, 1984, no construction grant could be awarded for projects that discharged into stream segments which had not, at least once since December 1981, had their water quality standards reviewed and revised or new standards adopted as appropriate under Section 303(c). The efforts by the States to comply with this onetime requirement essentially made the States' water quality standards current as of that date for segments with publicly-owned treatment works (POTWs) discharging into them.

Additional impetus to the water quality standards program occurred on February 4, 1987, when Congress enacted the Water Quality Act of 1987 (Pub. L. 100-4). Congressional impatience with the lack of progress in State adoption of standards for toxics (which had been a national program priority since the early 1980's) resulted in the 1987 adoption of new water quality standard provisions in the Water Quality Act amendments. These amendments reflected Congress' conclusion that toxic pollutants in water are one of the most pressing water pollution problems. One concern Congress had was that States were relying, for the most part, on narrative criteria to control toxics (e.g. "no toxics in toxic amounts"), which made development of effluent limitations in permits difficult. To remedy this, Congress adopted section 303(c)(2)(B), which essentially required development of numeric criteria for those water body segments where toxic pollutants were likely to adversely affect designated uses.

The 1987 Amendments gave new teeth to the control of toxic pollutants. As Senator Mitchell put it, Section 303(c)(2)(B) requires "States to identify waters that do not meet water quality standards due to the discharge of toxic substances, to adopt numerical criteria for the pollutants in such waters, and to establish effluent limitations for individual discharges to such water bodies." (From Senator Mitchell, 133 Cong. Rec. S733).

To assist States in complying with Section 303(c)(2)(S), EPA issued program guidance in December 1988 and instituted an expanded program of training and technical assistance.

Section 518 was another major addition in the 1987 Amendments to the Act. This section extended participation in the water quality standards and 401 certification programs to

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certain Indian Tribes. The Act directed EPA to establish procedures by which a Tribe could “qualify for treatment as a State,” at its option, for purposes of administering the standards and 401 certification programs. The Act also required EPA to create a mechanism to resolve disputes that might develop when unreasonable consequences arise from a Tribe and a State or another Tribe adopting differing water quality standards on common bodies of water.

Furthermore, with the 1987 Amendments, the Act explicitly recognized EPA’s antidegradation policy for the first time. The intent of the antidegradation policy in EPA’s regulation was and is to protect existing uses and the level of water quality necessary to protect existing uses and to provide a means for assessing activities that may lower water quality in high quality waters. Section 303(d)(4) of the Act requires that water quality standards in those waters that meet or exceed levels necessary to support designated uses “may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.”

Regulatory Requirements and Guidance

In the late 1960’s and early 1970’s the water quality standards program was initiated and administered based on minimal guidance and Federal policies—many of which are still reflected in the water quality standards program today.

EPA first promulgated a water quality standards regulation in 1975 (40 CFR 130.17, 40 FR 55334, November 28, 1975) as part of EPA’s water quality management regulations mandated under Section 303(e) of the Act. As discussed earlier, the standards program had a relatively low priority during this time. This was reflected in the minimal requirements of the first Water Quality Standards Regulation. Few requirements on designating water uses and procedures were included. The Regulation merely required “appropriate” water quality criteria necessary to support designated uses. Toxic pollutants or any other specific criteria were not mentioned. The antidegradation policy was incorporated as a regulatory requirement.

State response to the initial regulation was varied and in some cases inadequate. Some States developed detailed water quality standards regulations while others adopted only general provisions which proved to be of limited use in the management of increasingly complex water quality problems. The few water quality criteria that were adopted addressed a limited number of pollutants and primarily described fundamental water quality conditions (e.g., pH, temperature, dissolved oxygen and suspended solids) or dealt with conventional pollutants.

In the late 1970s, a greater appreciation evolved on the need to expand and accelerate the control of pollutants in surface waters using water quality-based controls. It became clear that primary reliance on industry effluent guidelines or effluent standards under Section 307 of the Act would not comprehensively address pollutants, particularly toxic pollutants, and that existing State water quality standards needed to be better developed.

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EPA moved to strengthen the water quality program to complement the technology based controls.

To facilitate this effort, EPA decided to amend the Water Quality Standards Regulation to explicitly address toxic criteria requirements in State standards and other legal and programmatic issues. This effort culminated in the promulgation of a revised water quality standards regulation on November 8, 1983 (54 FR 51400), which is still in effect. This regulation is much more comprehensive than its predecessor and it includes many more specific regulatory and procedural requirements. Nonetheless, it is still a succinct and flexible regulation for a program with a scope as broad as the national water quality criteria and standards program.

The regulation specifies the roles of the States, Tribes and EPA and the administrative requirements for States and Tribes in adopting and submitting their standards to EPA for review. It also delineates the EPA requirements for review of State and Tribal standards and promulgation of federal standards.

The regulation provided States and subsequently Tribes with the option of refining their use designation process by allowing them to establish subcategories of uses, such as cold water and warm water aquatic life designations. The regulation expanded and clarified the factors that could be applied by a State in removing a designated use that is not an existing use. The regulation recognized that naturally occurring pollutant concentrations, naturally low or intermittent flow conditions, human caused conditions or sources of pollution that cannot be remedied, hydrologic modifications (such as dams or channelized streams), natural physical conditions, and widespread economic and social impact could be used to demonstrate that attaining a use designation is not feasible (see 40 CFR 131.10(g)). Part 131.10(h) identified circumstances in which States are prohibited from removing designated uses.

Much more specificity was provided in the 1983 regulation regarding the requirements for States on the form of water quality criteria adopted by the States. Under 40 CFR 131.11(b) of the regulation, States and Tribes may use the criteria developed by EPA under Section 304(a) of the Act, 304(a) guidance modified to reflect site-specific conditions, or criteria developed through other scientifically defensible methods. Section 304(a) criteria are the water quality criteria that EPA develops and provides in the form of guidance to States and Tribes pursuant to CWA section 304(a). In practice, States and Tribes have applied all of these provisions in setting water quality standards.

The 1983 regulation also clarified that States and subsequently Tribes may adopt discretionary policies affecting the implementation of standards, such as mixing zones, low flows, and variances. Such policies are subject to EPA review under 303(c). Section 131.11 of the regulation requires States and subsequently Tribes with water quality standards programs to review available information and "... to identify specific water bodies where toxic pollutants may be adversely affecting water quality ...and... adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use."

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Under the statutory scheme, during the 3-year review period following EPA's 1980 publication of section 304(a) water quality criteria to protect human health and aquatic life, States were expected to review those criteria and adopt standards for many priority toxic pollutants. A few States adopted large numbers of numeric toxics criteria, primarily for the protection of aquatic life. Other States adopted few or no water quality criteria for priority toxic pollutants. Some relied on a narrative "free from toxicity" criterion, and "action levels" for toxic pollutants or occasionally calculated site-specific criteria. Few States addressed the protection of human health by adopting numeric human health criteria.

In support of the 1983 Regulation, EPA simultaneously issued program guidance entitled *Water Quality Standards Handbook* (December, 1983). The Handbook provided guidance on the interpretation and implementation of the Water Quality Standards Regulation. This document also contained information on scientific and technical analyses that are used in making decisions that would impact water quality standards. EPA also developed the *Technical Support Document for Water Quality Based Toxics Control* (EPAA4/485032, September, 1985)(TSD) which provided additional guidance for implementing State water quality standards. In 1991, EPA revised and expanded the TSD. (EPA 505/2-90-001, March 1991). In 1994, EPA issued the *Water Quality Standards Handbook: Second Edition* (EPA-823-B-94-006, August 1994).

To accelerate compliance with CWA section 303(c)(2)(B) (created by the 1987 Water Quality Act), EPA started action in 1990 to promulgate numeric water quality criteria for those States that had not adopted sufficient water quality standards for toxic pollutants. The intent of the rule making, known as the National Toxics Rule, was to strengthen State water quality management programs by increasing the level of protection afforded to aquatic life and human health through the adoption of all available criteria for toxic pollutants present or likely to be present in State waters. This action culminated on December 22, 1992, with EPA promulgating Federal water quality criteria for priority toxic pollutants for 14 States and Territories (see 57 FR 60848).

Subsequent to the promulgation of criteria under the National Toxics Rule, EPA altered its national policy on the expression of aquatic life criteria for metals. On May 4, 1995 at 60 FR 22228, EPA issued a stay of several metals criteria (expressed as total recoverable metal) previously promulgated under the National Toxics Rule for the protection of aquatic life. EPA simultaneously issued an interim final rule that changed these metal criteria promulgated under the National Toxics Rule from the total recoverable form to the dissolved form.

The Water Quality Standards Regulation was amended in 1991 to implement Section 518 of the Act to expand the standards program to include Indian Tribes (56 FR 64893, December 12, 1991). EPA added 40 CFR 131.7 to describe the requirements of the issue dispute resolution mechanism (to resolve unreasonable consequences that may arise between a Tribe and a State or another Tribe when differing water quality standards have been adopted for a common body of water) and 40 CFR 131.8 to establish the procedures

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by which a Tribe applies for authorization to assume the responsibilities of the water quality standards and section 401 certification programs.

Water quality standards are essential to a wide range of surface water activities, including: (1) setting and revising water quality goals for watersheds and/or individual water bodies, (2) monitoring water quality to provide information upon which water quality based decisions will be made, (3) calculating total maximum daily loads (TMDLs), waste load allocations (WLAs) for point sources of pollution, and load allocations (LAs) for non point sources of pollution, (4) issuing water quality certifications for activities that may affect water quality and that require a federal license or permit, (5) developing water quality management plans which prescribe the regulatory, construction, and management activities necessary to meet the water body goals, (6) calculating NPDES water quality-based effluent limitations for point sources, in the absence of TMDLs, WLAs, LAs, and/or water quality management plans; (7) preparing various reports and lists that document the condition of the State's or Tribe's water quality, and (8) developing, revising, and implementing an effective section 319 management plan which outlines the State's or Tribe's control strategy for non point sources of pollution.

Also, as described in EPA's 40 CFR 131.21, EPA requires that water quality standards adopted by states and authorized tribes on or after May 30, 2000 must be approved by EPA before they can be used as the basis for actions, such as establishing water quality-based effluent limitations or total maximum daily loads (TMDLs), under the Clean Water Act. (See 65 FR 24641, April 27, 2000, for more information regarding this requirement).

Review and Approval of State Water Quality Standards

The Clean Water Act requires States and authorized Indian Tribes to review their standards from time to time, but at least once every three years, and revise them if appropriate. Updates may be needed, for example, due to changing water quality conditions or water body uses or new scientific information on the effects of pollutants in the environment. In preparing proposed revisions to their standards, States and Tribes consider requests from industry, environmental groups, and the public, and review available information (e.g., CWA § 305(b) reports, EPA guidance).

Each State and authorized Tribe has its own legal and administrative procedures for adopting water quality standards. In general, standards are adopted following a process in which draft revisions are developed (this may include a work group process or informal public meetings) and formally proposed for public comment. A public hearing is then held to receive input from the public regarding the proposal. The proposed water quality standards and supporting information are made available to the public prior to the hearing. States and Tribes are required to prepare a summary of the public comments received and how each comment was addressed.

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Pursuant to revisions to the water quality standards regulation promulgated in April of 2000 (*the "Alaska" rule*), new or revised water quality standards become effective for purposes of the Clean Water Act upon EPA approval.

EPA approval of a new or revised water quality standard is considered a federal action which may be subject to the Section 7 consultation requirements of the Endangered Species Act (ESA). Section 7 of the ESA requires federal agencies to protect endangered species and threatened species and prohibits actions "likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined to be critical..." Accordingly, consultation with the U.S. Fish and Wildlife Service is an important part of EPA's water quality standards approval process.

The Clean Water Act also authorizes EPA to promulgate superseding Federal water quality standards in cases where new or revised State or Tribal standards are not consistent with applicable requirements of the Act or in situations where the EPA Administrator determines that Federal standards are necessary to meet the requirements of the Act. EPA promulgation of water quality standards requires a rule making process and opportunity for public review and comment.

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Modified, 1 CMC § 3806(f).

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History: Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 15554 (Aug. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

Commission Comment: The 2004 amendments deleted the original appendices, tables A and B, and replaced them with former Appendix 1. The 2014 amendments deleted the former Appendix 1 and replaced them with the current Appendix 1.