

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

CHAPTER 65-40

HARMFUL SUBSTANCE CLEAN UP REGULATIONS

Part 001 General Provisions; Overall Clean Up Process

- § 65-40-001 Purpose
- § 65-40-005 Applicability
- § 65-40-010 Definitions
- § 65-40-015 Usage

Part 100 Site Reports and Clean up Decision

- § 65-40-101 Site Discovery and Reporting
- § 65-40-105 Initial Investigation
- § 65-40-110 Site Hazard Assessment
- § 65-40-115 Commonwealth Remedial Investigation and Feasibility Study
- § 65-40-120 Selection of Clean Up Actions

Part 200 Site Clean Up and Monitoring

- § 65-40-201 Clean Up Actions
- § 65-40-205 Compliance Monitoring Requirements
- § 65-40-210 Periodic Review
- § 65-40-215 Interim Actions
- § 65-40-220 Institutional Controls
- § 65-40-225 Evacuation
- § 65-40-230 Routine Clean Up Actions

Part 300 Administrative Procedures for Remedial Actions

- § 65-40-301 Determination of Status as a Potentially Liable Person
- § 65-40-305 Administrative Options for Remedial Actions
- § 65-40-310 Consent Decrees
- § 65-40-315 Agreed Orders
- § 65-40-320 Enforcement Orders

Part 400 Public Participation

- § 65-40-401 Public Notice and Participation

Part 500 Clean Up Standards

- § 65-40-501 Overview of Clean Up Standards
- § 65-40-505 General Policies
- § 65-40-510 Use of Method A
- § 65-40-515 Use of Method B
- § 65-40-520 Use of Method C
- § 65-40-525 Analytical Considerations
- § 65-40-530 Human Health Risk Criteria
- § 65-40-535 Applicable Commonwealth and Federal Laws
- § 65-40-540 Ground Water Clean Up Standards
- § 65-40-545 Surface Water Clean Up Standards
- § 65-40-550 Soil Clean Up Standards
- § 65-40-555 Clean Up Standards to Protect Air Quality
- § 65-40-560 Sediment Clean Up Standards

Part 600 Other Requirements

- § 65-40-601 Property Access
- § 65-40-605 Worker Safety and Health
- § 65-40-610 Sampling and Analysis Plans
- § 65-40-615 Analytical and Testing Procedures
- § 65-40-620 General Submittal Requirements
- § 65-40-625 Record Keeping Requirements
- § 65-40-630 Endangerment
- § 65-40-640 Project Coordinator
- § 65-40-645 Emergency Actions
- § 65-40-650 Miscellaneous
- § 65-40-655 Severability

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

Chapter History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

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

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

Section 304. Department of Public Works.

...

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

The full text of Executive Order 94-3 is set forth in the commission comment to 1 CMC § 2001.

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

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

Part 001 - General Provisions; Overall Clean Up Process

§ 65-40-001 Purpose

(a) The regulations in this chapter are promulgated under the Commonwealth Environmental Protection Act. They establish administrative processes and standards to identify, investigate, and clean up facilities where harmful substances have come to be located. They define the role of the Division and encourage public involvement in decision making at these facilities.

(b) The goal of this chapter is to implement the policy declared by § 3111 of the Commonwealth Environmental Protection Act. This chapter provides a workable process to accomplish effective and expeditious clean ups in a manner that protects human health and the environment. This chapter is primarily intended to address releases of harmful substances caused by past activities, although its provisions may be applied to potential and ongoing releases of harmful substances from current activities.

Modified, 1 CMC § 3806(f), (d).

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

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

§ 65-40-005 Applicability

(a) The regulations in this chapter shall apply to all facilities where there has been a release or threatened release of a harmful substance that may pose a threat to human health or the environment. Under this chapter, the Division may require a potentially liable person to take, or the Division may itself take, those actions necessary to investigate and remedy these releases.

(b) Nothing herein shall be construed to diminish the Division's authority to address a release or threatened release under other applicable laws or regulations. The clean up process and procedures under this chapter and under other laws may be combined. The Division may initiate a remedial action under this chapter and may, upon further analysis, determine that another law is more appropriate, or vice versa.

(c) If a harmful substance remains at a facility after actions have been completed under other applicable laws or regulations, the Division may apply this chapter to protect human health or the environment.

Modified, 1 CMC § 3806(f), (d).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-010 Definitions

For the purpose of this chapter, the following definitions shall apply:

(a) "Act" means any law, and subsequent amendments, enacted by the Commonwealth intended to protect the public health and the environment, including, but not limited to, the Commonwealth Environmental Protection Act, Public Law 3-23 and as subsequently amended by Public Law 11-103, and the Commonwealth Groundwater Management and Protection Act of 1988, Public Law 6-12.

(b) "Acute toxicity" means the ability of a harmful substance to cause injury or death to an organism as a result of a short-term exposure to a harmful substance.

(c) "All practicable methods of treatment" means all technologies and/or methods currently available and demonstrated to work under similar site circumstances or through pilot studies, and applicable to the site at reasonable cost. These include "all known available and reasonable methods of treatment" (AKART) for discharges or potential discharges to waters of the Commonwealth, and "best available control technologies" for releases of harmful substances into the air resulting from clean up actions.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

- (d) “Applicable Commonwealth and federal laws” means all legally applicable requirements and those requirements that the Division determines, based on the criteria in § 65-40-535(c), are relevant and appropriate requirements.
- (e) “Area background” means the concentrations of harmful substances that are consistently present in the environment in the vicinity of a site which are the result of human activities unrelated to releases from that site.
- (f) “Carcinogen” means any substance or agent that produces or tends to produce cancer in humans. For implementation of this chapter, the term carcinogen will apply to substances on lists A (known human) and B (probable human) as prepared by the National Toxicology Program, a Division of the U.S. Department of Health and Human Services, and any substance which causes a statistically significant increased incidence of benign or malignant tumors in a single, well conducted animal bioassay, consistent with the weight of evidence approach specified in the United States Environmental Protection Agency’s Guidelines for Carcinogen Risk Assessment as set forth in 51 FR 33992.
- (g) “Chronic toxicity” means the ability of a harmful substance to cause injury or death to an organism resulting from repeated or constant exposure to the harmful substance over an extended period of time.
- (h) “Commonwealth” means the Commonwealth of the Northern Mariana Islands.
- (i) “Containment” means a container, vessel, barrier, or structure, whether natural or constructed, which confines a harmful substance within a defined boundary and prevents or minimizes its release into the environment.
- (j) “Contaminant” means any harmful substance that does not occur naturally or occurs at greater than natural background levels.
- (k) “Day” means calendar day; however, any document due on the weekend or a holiday may be submitted on the first working day after the weekend or holiday.
- (l) “Division” means the Commonwealth’s Division of Environmental Quality (DEQ), or any other governmental agency designated by DEQ to administer the functions under the regulations in this chapter.
- (m) “Direct contact” means exposure to harmful substances through ingestion, inhalation, or dermal contact.
- (n) “Director” means the director of the Division or the director’s designee.
- (o) “Environment” means any plant, animal, natural resource, surface water (including underlying sediments), ground water, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, ambient air, or ecological system within the Commonwealth or under the jurisdiction of the Commonwealth.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(p) “Exposure” means subjection of an organism to the action, influence, or effect of a harmful substance (chemical agent) or physical agent. Exposure is quantified as the amount of the agent available at the exchange boundaries (e.g., skin, lungs, gut) and available for absorption.

(q) “Exposure pathway” means the path a harmful substance takes or could take from a source to an exposed organism. An exposure pathway describes the mechanism by which an individual or population is exposed or has the potential to be exposed to harmful substances at or originating from a site. Each exposure pathway includes an actual or potential source or release from a source, an exposure point, and an exposure route. If the exposure point differs from the source of the harmful substance, the exposure pathway also includes a transport/exposure medium.

(r) “Facility” means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a harmful substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(s) “Federal clean up law” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601, et seq.

(t) “Food crop” means any domestic plant which is produced for the purpose of, or may be used in whole or in part for, consumption by people or livestock. This shall include nursery, root, or seedstock to be used for the production of food crops.

(u) “Ground water” means water in a saturated zone or stratum beneath the surface of land or below a surface water.

(v) “Hazard index” means the sum of two or more hazard quotients for multiple harmful substances and/or multiple exposure pathways.

(w) “Harmful substance” means any hazardous substance under section 101(14) of the federal clean up law, 42 U.S.C. § 9601(14); petroleum or petroleum products; and any substance or category of substances, including solid waste decomposition products, determined by the Director to present a threat to human health or the environment if released into the environment. The term harmful substance does not include any of the following when contained in an underground or aboveground storage tank from which there is not a release: crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, Commonwealth, and local laws.

(x) “Harmful substance site” means any facility where there has been confirmation of a release or threatened release of a harmful substance that requires remedial action.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(y) “Hazard quotient” or “HQ” means the ratio of the dose of a single harmful substance over a specified time period to a reference dose for that harmful substance derived for a similar exposure period.

(z) “Highest beneficial use” means the beneficial use of a resource generally requiring the highest quality in the resource. For example, for many harmful substances, providing protection for the beneficial use of drinking water will generally also provide protection for a great variety of other existing and future beneficial uses of ground water.

(aa) “Indicator harmful substances” means the subset of harmful substances present at a site selected under § 65-40-530 for monitoring and analysis during any phase of remedial action for the purpose of characterizing the site or establishing clean up requirements for that site.

(bb) “Institutional control” means a measure undertaken to limit or prohibit activities that may interfere with the integrity of a clean up action or result in exposure to harmful substances at the site.

(cc) “Legally applicable requirements” means those clean up standards, standards of control, and other human health and environmental protection requirements, criteria, or limitations promulgated under Commonwealth or federal law, that specifically address a harmful substance, clean up action, location, or other circumstances at the site.

(dd) “Mail” means delivery through the United States Postal Service or an equivalent method of delivery or transmittal, including private mail carriers, or personal delivery.

(ee) “Maximum contaminant level” or “MCL” means the maximum concentration of a contaminant established by either the Commonwealth or the United States Environmental Protection Agency under the Federal Safe Drinking Water Act (42 U.S.C. §§ 300f, et seq.).

(ff) “Method detection limit” or “MDL” means the minimum concentration of a compound that can be measured and reported with 99% confidence that the value is greater than zero.

(gg) “Natural background” means the concentration of a harmful substance consistently present in the environment which has not been influenced by localized human activities.

(hh) “Natural person” means any unincorporated individual or group of individuals. The term “individual” is synonymous with “natural person.”

(ii) “Owner or operator” means any person with any ownership interest in the facility or who exercises any control over the facility; or in the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment. The term does not include a person who, without participating in the

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility.

(jj) "Permanent solution" means a clean up action in which clean up standards of part 500 can be met without further action being required at the site being cleaned up or any other site involved with the clean up action, other than the approved disposal of any residue from the treatment of harmful substances.

(kk) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, the federal government, or other governmental entity.

(ll) "Potentially liable person" means any person whom the Division finds to be a potentially responsible person under federal clean up law, or any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) whom the Division finds to have contributed to, or be contributing to, the past or present handling, storage, treatment, transportation or disposal of any harmful substance, where such handling, storage, treatment, transportation or disposal may present an imminent and substantial endangerment to health or the environment. "Potentially liable person" does not include any person that treats water for a harmful substance in compliance with the CNMI Drinking Water Regulations [NMIAC, title 65, chapter 20] and has not been deemed to have contributed to a release of a harmful substance(s) in accordance with the regulations in this chapter.

(mm) "Practicable" means (except when used in the phrase "permanent to the maximum extent practicable" which is defined in § 65-40-120(e)) capable of being designed, constructed, and implemented in a reliable and effective manner including consideration of cost. When considering cost under this analysis, an alternative shall not be considered practicable if the incremental cost of the alternative is substantial and disproportionate to the incremental degree of protection provided by the alternative over other lower cost alternatives.

(nn) "Preliminary remediation goals" or "PRGs" means those initial clean up goals that are developed under federal Risk Assessment Guidance for Superfund issued by the U.S. EPA's Office of Emergency and Remedial Response.

(oo) "Reasonable maximum exposure" means the highest exposure that can be reasonably expected to occur for a human or other living organisms at a site under current and potential future site use.

(pp) "Release" means any intentional or unintentional entry of any harmful substance into the environment, including but not limited to the abandonment or disposal of containers of harmful substances.

(qq) "Relevant and appropriate requirements" means those clean up standards established under Commonwealth and federal law that, while not legally applicable to the

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

clean up action, the Division determines address problems similar to those encountered at the site. The criteria specified in § 65-40-535(c) shall be used to determine if a requirement is relevant and appropriate.

(rr) “Remedy” or “remedial action” means any action or expenditure to identify, eliminate, or minimize any threat posed by harmful substances to human health or the environment, including any investigative and monitoring activities with respect to any release or threatened release of a harmful substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(ss) “Restoration time frame” means the period of time needed to achieve the required clean up levels at the points of compliance established for the site.

(tt) “Risk” means the probability that a harmful substance, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

(uu) “Saturated zone” means the area below the water table in which all interstices are filled with water.

(vv) “Secondary maximum contaminant level” means the maximum concentration of a secondary contaminant in water established either by the Commonwealth or the United States Environmental Protection Agency under the Federal Safe Drinking Water Act (42 U.S.C. §§ 300f, et seq.) and published in 40 C.F.R. 143.

(ww) “Sensitive environment” means an area of particular environmental value, where a release could pose a greater threat than in other areas including: wetlands; critical habitat for endangered or threatened species; wildlife refuge; critical habitat, breeding or feeding area for fish or shellfish; wild or scenic river; rookery; riparian area.

(xx) “Site” means the same as facility.

(yy) “Soil” means a mixture of organic and inorganic solids, air, water, and biota which exists on the earth’s surface above bedrock, including materials of anthropogenic sources such as slag, sludge, etc.

(zz) “Surface water” means all natural waters, fresh, brackish, or marine including wetland, around and within the Commonwealth and as further delineated and defined under the Marine Sovereignty Act of 1980, Public Law 2-7.

(aaa) “Technically possible” means capable of being designed, constructed, and implemented in a reliable and effective manner, regardless of cost.

(bbb) “Total excess cancer risk” means the upper bound on the estimated excess cancer risk associated with exposure to multiple harmful substances and multiple exposure pathways.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(ccc) “Underground storage tank” or “UST” means an underground storage tank and connected underground piping as defined in the rules adopted under the Act.

(ddd) “Unrestricted site use conditions” means restrictions on the use of the site or natural resources affected by releases of harmful substances from the site are not required to ensure continued protection of human health and the environment.

(eee) “Upper bound on the estimated excess cancer risk of one in one hundred thousand (1×10^{-5})” means the upper 95th percent confidence limit on the estimated risk of one additional cancer above the background cancer rate per one hundred thousand individuals.

(fff) “Upper bound on the estimated excess cancer risk of one in one million” means the upper 95th percent confidence limit on the estimated risk of one additional cancer above the background cancer rate per one million individuals.

(ggg) “Wastewater facility” means all structures and equipment required to collect, transport, treat, reclaim, or dispose of domestic, industrial, or combined domestic/industrial wastewater.

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

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The notice of adoption for the 2001 regulations added new subsections (b) and (g), redesignated the remaining subsections accordingly and amended subsections (f) and (ll). See 23 Com. Reg. at 18084-85 (June 19, 2001). The Commission inserted commas after the words “constructed” in subsections (mm) and (aaa) pursuant to 1 CMC § 3806(g).

§ 65-40-015 Usage

For the purposes of this chapter, the following shall apply:

(a) Unless the context clearly requires otherwise, the use of the singular shall include the plural and conversely.

(b) The terms “applicable,” “appropriate,” “relevant,” “unless otherwise directed by the Division,” and similar terms implying discretion mean as determined by the Division.

(c) “Conduct” means to perform or undertake whether directly or through an agent or contractor, unless this chapter expressly provides otherwise.

(d) “Include” means included but not limited to.

(e) “May” means the provision is optional and permissive, and does not impose a requirement.

- (f) “Shall” means the provision is mandatory.
- (g) “Threat” means threat or potential threat.
- (h) “Under” means pursuant to, subject to, required by, established by, in accordance with, and similar expressions of legislative or administrative authorization or direction.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001). The Commission inserted a comma after the word “division” in subsection (b) pursuant to 1 CMC § 3806(g).

Part 100 - Site Reports and Clean up Decision

§ 65-40-101 Site Discovery and Reporting

(a) Purpose. As part of a program to identify harmful substance sites, this section sets forth the requirements for reporting a release of a harmful substance, whether discovered before or after the effective date of this chapter. The Division may take any other actions it deems appropriate to identify potential harmful substance sites.

(b) Release report. Any owner or operator who has information that a harmful substance has been released to the environment at the owner or operator’s facility and may be a threat to human health or the environment shall report such information to the Division by June 1, 2001, or for discovery of releases after this date, within one week of discovery. To the extent known, the report shall include: The identification and location of the harmful substance, circumstances of the release and the discovery, and any remedial actions planned, completed, or underway. All other persons are encouraged to report such information to the Division.

(c) Exemptions. The following releases are exempt from these notification requirements:

- (1) Lawful application of pesticides and fertilizers for their intended purposes and according to label instructions;
- (2) Lawful and non-negligent use of harmful substances by a natural person for personal or domestic purposes;
- (3) A release in accordance with a permit that authorizes the release;
- (4) A release previously reported to the Division in fulfillment of a reporting requirement in this chapter or in another law or regulation;
- (5) A release reported to the United States Environmental Protection Agency under CERCLA, section 103(c) (42 U.S.C. § 9603(c)) before the effective date of this chapter;
- (6) A release to the air from other impacted media where there is no impact to other media;
- (7) A release to a permitted wastewater facility; or
- (8) A release reported under the UST rules adopted pursuant to the Act.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(9) An exemption from these notification requirements does not imply a release from liability in future actions by the Division.

(d) Other obligations. Nothing in this section shall eliminate any obligations to comply with reporting requirements that may exist in a permit or under other laws.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The final paragraph of subsection (c) was not designated. The Commission designated it subsection (c)(9).

The notice of adoption for the 2001 regulations changed the proposed language of subsections (c)(1) and (c)(6). See 23 Com. Reg. at 18085 (June 19, 2001).

§ 65-40-105 Initial Investigation

(a) Purpose. The purpose of the initial investigation is to determine whether or not a release or threatened release of a harmful substance may have occurred that warrants further action under this chapter.

(1) Applicability and timing. Whenever the Division receives information and has a reasonable basis to believe that there may be a release or a threatened release of a harmful substance that may pose a threat to human health or the environment, the Division shall conduct an initial investigation within ninety days.

(2) Exemptions. The Division shall not be required to conduct an initial investigation when:

- (i) The circumstances associated with the release or threatened release are known to the Division and have previously been or currently are being evaluated by the Division or other government agency; or
- (ii) The release is permitted.

(b) Contents. The initial investigation shall include at a minimum: A site visit and documentation of conditions observed.

(c) Division deferral to others. The Division may rely on another government agency or a contractor to the Division to conduct an initial investigation on its behalf, provided the Division determines such agency or contractor is not suspected to have contributed to the release or threatened release of a harmful substance and that no conflict of interest exists.

(d) Division decision. Based on the information obtained about the site, the Division shall within thirty days of completion of the initial investigation make one or more of the following decisions:

- (1) A site hazard assessment is required;
- (2) Emergency remedial action is required;
- (3) Interim action is required; or

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

- (4) The site requires no further action under this chapter at this time because either:
- (i) There has been no release or threatened release of a harmful substance; or
 - (ii) A release or threatened release of a harmful substance has occurred, but in the Division's judgment, does not pose a threat to human health or the environment;
 - (iii) Action under another authority is appropriate; or
 - (iv) There are no known potentially liable persons.
- (e) A decision for a particular follow-up action does not preclude the Division from requiring some other action in the future based on reevaluation of the site or additional information. Nothing in this section shall preclude the Division from taking or requiring appropriate remedial action at any time.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The final paragraph was not designated. The Commission designated it subsection (e).

§ 65-40-110 Site Hazard Assessment

- (a) Purpose. The purpose of the site hazard assessment is to provide sufficient sampling data and other information to:
- (1) Confirm or rule out that a release or threatened release of a harmful substance has occurred;
 - (2) To identify the harmful substance and provide some information regarding the extent and concentration of the substance;
 - (3) Identify site characteristics that could result in the harmful substance entering and moving through the environment; and
 - (4) Evaluate the potential for the threat to human health and the environment.
- (b) Timing. Unless otherwise directed by the Division, a site hazard assessment shall be completed within a time frame set by the Division before proceeding to any subsequent phase of remedial action, other than an emergency or interim action.
- (c) Administrative options. The site hazard assessment may be conducted under any of the procedures described in § 65-40-305.
- (d) Scope and content. The scope and content is subject to approval by the Division. A site hazard assessment is an early study to provide preliminary data regarding the relative potential hazard of the site. A site hazard assessment is not intended to be a detailed site characterization, however it shall include sufficient sampling, site observations, maps, and other information needed to meet the purposes specified in subsection (a) of this section. To fulfill this requirement, a site hazard assessment shall include, as appropriate, the following information:
- (1) Identification of harmful substances, including what was released and is threatened to be released and/or, if known, what products of decomposition, recombination, or

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

chemical reaction are currently present on site, and an estimate of their quantities and concentrations;

(2) Evidence confirming a release or threatened release of harmful substances to the environment;

(3) Description of facilities containing releases, if any, and their condition;

(4) Identification of the location of all areas where a harmful substance is known on a site map and locations of all areas where a harmful substance is suspected to be on a site map;

(5) Consideration of surface water run-on and run-off and the harmful substances leaching potential;

(6) Preliminary characterization of the subsurface and ground water actually or potentially affected by the release, including distance to nearby wells, bodies of surface water, and drinking water intakes;

(7) Preliminary evaluation of receptors, including: Human population, food crops, domestic animals, wildlife, reservoirs, fish, recreation areas, parks, sensitive environments, irrigated areas, and aquatic resources currently or potentially affected by ground water, air, soil, sediment, or surface water containing the release of harmful substances at the site, including distances to these receptors;

(8) Any other physical factors which may be significant in estimating the potential or current exposure to sensitive biota; and

(9) An exposure assessment which evaluates potential immediate threats to the public health and long term threats to the public health or the environment.

(e) Guidance. The Division may make available guidance for how to conduct a site hazard assessment to meet the requirements of this section.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-115 Commonwealth Remedial Investigation and Feasibility Study

(a) Purpose. The purpose of a Commonwealth remedial investigation/feasibility study is to collect, develop, and evaluate sufficient information regarding a site to enable the selection of a clean up action under § 65-40-120.

(b) Timing. Unless otherwise directed by the Division, a Commonwealth remedial investigation/ feasibility study shall be completed within a time frame set by the Division before selecting a clean up action under § 65-40-120, except for an emergency or interim action.

(c) Administrative options. A Commonwealth remedial investigation/feasibility study may be conducted under any of the procedures described in § 65-40-305.

(d) Public participation will be accomplished in a manner consistent with § 65-40-401.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(e) Scope. The scope of a Commonwealth remedial investigation/feasibility study will depend on the informational needs of the specific facility. This requires that the process remain flexible, with the scope of the Commonwealth remedial investigation/feasibility study varying from site to site to avoid the collection of unnecessary information so that the clean up can proceed in a timely manner. However, in all cases sufficient information must be collected, developed, and evaluated to enable the selection of a clean up action under § 65-40-120. In addition, for facilities on the federal national priorities list, the Commonwealth remedial investigation/feasibility study shall comply with federal requirements, at a minimum.

(f) Contents. A Commonwealth remedial investigation/feasibility study shall include the following information as the Division deems appropriate:

(1) General facility information. General information, including: Project title; name, address, and phone number of project coordinator; legal description of the facility location; dimensions of the facility; present owner and operator; chronological listing of past owners and operators and operational history; and other pertinent information.

(2) Site conditions map. An existing site conditions map which illustrates relevant current site features such as: Property boundaries; proposed facility boundaries; adjacent properties; surface topography; surface and subsurface structures; utility lines; well locations; and other pertinent information.

(3) Field investigations. Sufficient investigations to characterize the distribution of harmful substances present at the site, and threat to human health and the environment. Where applicable to the site, these investigations will need to address the following:

(i) Surface water and sediments. Investigations of surface water and sediments to characterize significant hydrologic features such as: Surface drainage patterns and quantities, areas of erosion and sediment deposition, surface waters, flood plains, and actual or potential harmful substance migration routes towards and within these features. Sufficient surface water and sediment sampling shall be performed to adequately characterize the areal and vertical distribution of harmful substances. Properties of surface and subsurface sediments which are likely to influence the type and rate of harmful substance migration, or are likely to affect the ability to implement alternative clean up actions shall be characterized.

(ii) Soils. Investigations to adequately characterize the areal and vertical distribution of harmful substances in the soil due to the facility. Properties of surface and subsurface soils which are likely to influence the type and rate of harmful substance migration, or which are likely to affect the ability to implement alternative clean up actions shall be characterized.

(iii) Geology and ground water system characteristics. Investigations of site geology and hydrogeology to adequately characterize the areal and vertical distribution of harmful substances in the ground water and those features which affect the fate and transport of these harmful substances. This shall include, as appropriate, the description, physical properties and distribution of bedrock and unconsolidated materials; ground water flow rate and gradient for affected and potentially affected ground waters; ground water divides; areas of ground water recharge and discharge; location of public and private production wells; and ground water quality data.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(iv) Air and climate. An evaluation of air quality impacts, including sampling, where appropriate, and information regarding local and regional climatological characteristics which are likely to affect the harmful substance migration such as: Seasonal patterns of rainfall; the magnitude and frequency of significant storm events; temperature extremes; prevailing wind direction; and wind velocity.

(v) Land use. Information characterizing human populations exposed or potentially exposed to the harmful substance released from the facility and present and proposed land uses and zoning for the site and potentially affected areas.

(vi) Natural resources and ecology. Information to determine the impact or potential impact of the harmful substance from the facility on the natural resources and ecology of the area such as: Sensitive environment, plant and animal species, and other environmental receptors.

(vii) Harmful substance sources. A description of and sufficient sampling to define the location, quantity, areal and vertical extent of harmful substances within the source area(s). Where relevant, information on the physical and chemical characteristics, and the biological effects of harmful substances shall be provided.

(viii) Regulatory classifications. Regulatory designations classifying affected air, surface water and ground water, if any.

(4) Risk assessment. A risk assessment characterizing the current and potential threats to human health and the environment that may be posed by harmful substances. This assessment may not be required when the Division determines that proposed clean up standards are obvious and undisputed.

(5) Clean up action alternatives. An evaluation of alternative clean up actions that protect human health and the environment by eliminating, reducing, or otherwise controlling risks posed through each exposure pathway and migration route, shall be required. The number and types of alternatives to be evaluated shall take into account the characteristics and complexity of the facility. A phased approach for evaluation of alternatives may be required for certain facilities, including an initial screening of alternatives to reduce the number of potential remedies for the final detailed evaluation. The final evaluation of clean up action alternatives that pass the initial screening shall be evaluated for compliance with the requirements in § 65-40-120.

(6) Work plans. A sampling and analysis plan, and a safety and health plan shall be prepared as part of Commonwealth remedial investigation/feasibility study activities. These plans shall conform to the requirements specified in this chapter.

(7) Treatability studies. The Division may require treatability studies as necessary to provide sufficient information to develop and evaluate clean up action alternatives for a site.

(8) Other information as required by the Division.

(g) In appropriate cases the Division may allow departure from the requirements of subsection (f) of this section and will allow information to be incorporated by reference to avoid unnecessary duplication.

(h) Report. A report shall be prepared at the completion of the remedial investigation/feasibility study. Additionally, the Division may require reports to be submitted following discrete elements of the remedial investigation/feasibility study.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

Reports prepared under this section and under an order or decree shall be submitted to the Division for review and approval. The Division may, when appropriate, require that a plan be submitted and approved prior to initiating the Commonwealth remedial investigation/feasibility study.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The notice of adoption for the 2001 regulations changed the proposed language of subsection (f)(4). See 23 Com. Reg. at 18085 (June 19, 2001).

§ 65-40-120 Selection of Clean Up Actions

(a) Purpose.

(1) This section describes the requirements for selecting clean up actions. It specifies the criteria for approving clean up actions, policies for permanent solutions, the application of these criteria to particular situations, and the process for making these decisions. This section is intended to be used in conjunction with the clean up standards defined in §§ 65-40-501 through 65-40-560 and the administrative principles for the overall clean up process.

(2) Because clean up actions will often involve the use of several clean up technologies or methods at a single site, the overall clean up action shall meet the requirements of this section.

(b) Threshold requirements. All clean up actions conducted under this chapter shall protect human health and the environment; shall comply with clean up standards (see §§ 65-40-501 through 65-40-560); shall comply with applicable Commonwealth and federal laws (see § 65-40-535); and shall provide for compliance monitoring (see § 65-40-205).

(c) Other requirements. In addition, the clean up action conducted shall:

(1) Use permanent solutions to the maximum extent practicable (see § 65-40-120(d), (e), (g), and (h));

(2) Provide for a reasonable restoration time frame (see § 65-40-120(f)); and

(3) Consider public concerns raised during public comment on the draft clean up action plan (see § 65-40-120(j) and (k)).

(d) Clean up technologies.

(1) Clean up of harmful substance sites shall be conducted using technologies which remove or minimize the amount of untreated harmful substances remaining at a site. Toward that end, the following technologies for addressing specific harmful substances or pathways shall be considered:

(i) Reuse or recycling;

(ii) Destruction or detoxification;

(iii) Separation or volume reduction followed by reuse, recycling, destruction, or detoxification of the residual harmful substance;

(iv) Immobilization of harmful substances;

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(v) On-site or off-site disposal at an engineered facility designed to minimize the future release of harmful substances and in accordance with applicable Commonwealth and federal laws;

(vi) Isolation or containment with attendant engineering controls; and

(vii) Institutional controls and monitoring.

(2) A combination of technologies from more than one of the categories under (d)(1) of this subsection may be used at a specific site. For example, the source of the harmful substance may be recovered and recycled or destroyed, while containment is used to stop the migration of harmful substances that have reached the ground water.

(e) Permanent solutions.

(1) When selecting a clean up action, preference shall be given to permanent solutions to the maximum extent practicable.

(2) A permanent solution is one in which clean up standards can be met without further action being required at the original site or any other site involved with the clean up action, other than the approved disposal of any residue from preferred treatment technologies under subsection (e)(4)(a)(i) through (iii) of this section.

(3) In general, technologies which reuse, recycle, destroy, or detoxify harmful substances will result in permanent solutions if residual harmful substance concentrations are below clean up levels established under §§ 65-40-501 through 65-40-560. Containment of harmful substances and/or institutional controls alone are not permanent solutions. Other technologies, such as immobilization of harmful substances, may provide permanent solutions under some conditions.

(4) The Division recognizes that permanent solutions may not be practicable for all sites. A determination that a clean up action satisfies the requirement to use permanent solutions to the maximum extent practicable is based upon consideration of a number of factors, including:

(i) Overall protectiveness of human health and the environment;

(ii) Long-term effectiveness;

(iii) Short-term effectiveness;

(iv) Permanent reduction of toxicity, mobility and volume of the harmful substance;

(v) Ability to be implemented;

(vi) Clean up costs. When selecting from among two or more clean up action alternatives which have an equivalent level of protectiveness, preference may be given to the least cost alternative;

(vii) The degree to which community concerns are addressed.

(5) To ensure a bias toward permanent solutions, clean up actions conducted under this chapter including consideration of prior actions at the site shall comply with the following requirements:

(i) The clean up action shall prevent or minimize present and future releases and migration of harmful substances in the environment;

(ii) The clean up action shall provide for a net reduction in the amount of a harmful substance being released from the source area;

(iii) The clean up action shall not rely on dilution and dispersion of the harmful substance if active remedial measures are technically possible; and

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(iv) Institutional controls shall not be used as a substitute for clean up actions that would otherwise be technically possible, as determined by the Division.

(f) Restoration time frame.

(1) The clean up action selected shall provide for a reasonable restoration time frame. The factors to be considered when establishing a reasonable restoration time frame shall include:

- (i) Potential risks posed by the site to human health and the environment;
- (ii) Practicability of achieving a shorter restoration time frame;
- (iii) Current use of the site, surrounding areas, and associated resources that are, or may be, affected by releases from the site;
- (iv) Potential future use of the site, surrounding areas, and associated resources that are, or may be, affected by releases from the site;
- (v) Ability to control and monitor migration of harmful substances from the site;
- (vi) Toxicity of the harmful substances at the site; and
- (vii) Natural attenuation processes which reduce concentrations of harmful substances and have been documented to occur at the site or under similar site conditions.

(2) When area background concentrations would result in recontamination of the site to levels which exceed clean up levels, that portion of the clean up action which addresses clean up below area background concentrations may be delayed until the off-site sources of harmful substances are controlled. In these cases the remedial action shall be considered an interim action until clean up levels are attained.

(3) Where clean up levels determined under method C are below technically possible concentrations, concentrations that are technically possible to achieve shall be met within a reasonable time frame considering the factors in (1) of this subsection. In these cases the remedial action shall be considered an interim action until clean up levels are attained.

(4) Extending the restoration time frame shall not be used as a substitute for active clean up actions, when such actions are practicable.

(g) Containment actions. If the proposed clean up action involves on-site containment, the draft clean up action plan shall specify the types, levels, and amounts of harmful substances remaining on-site and the measures that will be utilized to prevent migration and contact with those substances and all future restrictions on the use and development of the containment site.

(h) Expectations. The Division has the following expectations for clean up actions conducted under this chapter. The Division recognizes that there may be sites where these expectations are not appropriate:

(1) In order to minimize the potential for migration of harmful substances, the Division expects that active measures will be taken to prevent precipitation and subsequent runoff from coming into contact with contaminated soils and waste materials. When such measures are impracticable, the Division expects that site runoff will be contained and treated as a harmful substance;

(2) The Division expects that when harmful substances remain on-site at concentrations which exceed clean up levels, those harmful substances will be

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

consolidated to the maximum extent practicable, where needed to minimize the potential for direct contact and migration of harmful substances;

(3) The Division expects that, for facilities adjacent to a surface water body, active measures will be taken to prevent/minimize releases to surface water via surface runoff and ground water discharges; and

(4) The Division expects that clean up actions conducted under this chapter will not result in a greater overall threat to human health and the environment than other alternatives.

(5) The Division expects that appropriate and protective fencing shall be used when any excavation, source of harmful substance, or remedial action, will potentially endanger the public, or expose the public to hazardous substances.

(i) Draft clean up action plan. The Division shall review a draft clean up action plan for clean up actions conducted by a potentially liable person under an order or decree. The level of detail in the draft clean up action plan shall be commensurate with the complexity of the site and proposed clean up action.

(1) The draft clean up action plan shall include the following:

(i) A general description of the proposed clean up action including compliance monitoring;

(ii) A brief summary of other alternative clean up actions evaluated in the Commonwealth remedial investigation/ feasibility study or comparable documents;

(iii) Site clean up levels and points of compliance for each harmful substance and for each media of concern;

(iv) The schedule for implementation of the clean up action plan including, if known, restoration time frame;

(v) Required institutional controls and site use restrictions, if any, for the proposed clean up action;

(vi) Justification for selecting a clean up;

(vii) Applicable clean up standards (this does not preclude subsequent identification of applicable clean up standards); and

(viii) Where the clean up action involves on-site containment, specification of the types, levels, and amounts of harmful substances remaining on site and the measures that will be utilized to prevent migration and contact with those substances.

(2) The clean up plan shall not be implemented until approved by the Division.

(j) Public participation. The Division shall provide public notice and opportunity for comment on the draft clean up plan as described in § 65-40-401.

(k) Federal clean up sites. A record of decision or order or consent decree prepared under the federal clean up law that provides for a clean up action may be used by the Division to meet the requirements of this section provided:

(1) The clean up action meets the requirements in subsections (b) and (c) of this section;

(2) The Commonwealth has concurred with the clean up action; and

(3) An opportunity was provided for the public to comment on the clean up action.

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

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The notice of adoption for the 2001 regulations changed the proposed language of subsection (f)(3). See 23 Com. Reg. at 18085 (June 19, 2001).

Part 200 - Site Clean Up and Monitoring

§ 65-40-201 Clean Up Actions

Unless otherwise directed by the Division, clean up actions shall comply with this section except for emergencies or interim actions.

(a) Purpose. The purpose of this section is to ensure that the clean up action is designed, constructed, and operated in a manner which is consistent with:

- (1) The clean up action plan;
- (2) Accepted engineering practices; and
- (3) The requirements of § 65-40-120(a) and (b).

(b) Administrative options. A clean up action may be conducted under any of the procedures described in § 65-40-305.

(c) Public participation. During clean up action implementation, public participation shall be accomplished in a manner consistent with the requirements of § 65-40-401.

(d) Plans describing the clean up action. Design, construction, and operation of the clean up action shall be consistent with the purposes of this section and shall consider relevant information provided by the Commonwealth remedial investigation/feasibility study. For most clean ups, to ensure this is done it will be necessary to prepare the following documents. The scope and level of detail in these documents may vary from site to site depending on the site specific conditions and nature and complexity of the proposed clean up action. In some cases it may be appropriate to combine the information in these various documents into one report to avoid unnecessary duplication. Any document prepared in order to implement a clean up may be used to satisfy these requirements provided they contain the required information. In addition, for facilities on the national priorities list, the plans prepared for the clean up action shall also comply with federal requirements.

(1) Site remedial design report. The report shall include sufficient information for the development and review of construction plans and specifications. It shall document concepts and criteria used for design of the clean up action.

(2) Construction plans and specifications. Construction plans and specifications shall detail the clean up actions to be performed. The plans and specifications shall be prepared in conformance with currently accepted practices and techniques.

(3) Operation and maintenance plan. An operation and maintenance plan which presents technical guidance and regulatory requirements to assure effective operations under both normal and emergency conditions.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(e) In appropriate cases the Division may authorize departure from the requirements of subsection (d) of this section, and may allow information to be incorporated by reference to avoid unnecessary duplication.

(f) Permits and approvals, if required for construction or to otherwise implement the clean up action shall be identified and where possible, resolved prior to, or during, the design phase to avoid delays during construction and implementation of the clean up action.

(g) Construction. Construction shall be conducted in accordance with the construction plans and specifications, and other plans prepared under this section.

(1) Division inspections.

(i) The Division may perform site inspections and construction oversight. The Division may require that construction activities be halted at a site if construction or any supporting activities are not consistent with approved plans; are not in compliance with environmental regulations or accepted construction procedures; or endanger human health or the environment.

(ii) The Division may conduct a formal inspection of the site following construction and an initial operational period to ensure satisfactory completion of the construction.

(2) Construction documentation.

(i) During construction detailed records shall be kept of all aspects of the work performed including construction techniques and materials used, items installed, and tests and measurements performed.

(ii) As built reports. At the completion of construction, as built drawings and a report documenting all aspects of facility construction shall be submitted to the Division. The report shall also contain an opinion, based on testing results and inspections, as to whether the clean up action has been constructed in substantial compliance with the plans and specifications and related documents.

(iii) In appropriate cases, the Division may authorize departure from the requirements of this subsection and may allow information to be incorporated by reference to avoid unnecessary duplication.

(3) Plan modifications. Changes in the design or construction of the clean up action shall be approved by the Division.

(h) Plans or reports prepared under this section shall be submitted to the Division for review and approval.

(i) Waste management. Any waste contaminated by a harmful substance generated during clean up activities shall be adequately characterized to determine the chemical quality and physical characteristics of the waste material. A list of parameters, test methods, and other appropriate tools used for characterization shall be submitted to the Division for approval prior to treatment, storage, or disposal. Any waste contaminated by a harmful substance and requiring off-site treatment, storage or disposal, shall be transported to a facility permitted or approved to handle these wastes. Treatment, removal, or disposal may be initiated only upon written approval from the Division.

Modified, 1 CMC § 3806(e), (f).

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-205 Compliance Monitoring Requirements

- (a) Purpose. The purposes of compliance monitoring and evaluation of the data are to:
- (1) Protection monitoring. Confirm that human health and the environment are adequately protected during construction and the operation and maintenance period of an interim action or clean up action as described in the safety and health plan;
 - (2) Performance monitoring. Confirm that the interim action or clean up action has attained clean up standards and, if appropriate, other performance standards;
 - (3) Confirmational monitoring. Confirm the long-term effectiveness of the interim action or clean up action once clean up standards and, if appropriate, other performance standards have been attained.
- (b) General requirements. Compliance monitoring may, within the Division's discretion, be required for all clean up actions, and may be required for interim and emergency actions, performed under this chapter. Compliance monitoring may be required for all environmental media including air, ground water, surface water, soil, and sediment.
- (c) Compliance monitoring plans. A compliance monitoring plan shall be prepared, as DEQ deems necessary, for all clean up actions and may be required for interim and emergency actions unless otherwise directed by the Division. Plans prepared under this section and under an order or decree shall be submitted to the Division for review and approval. Protection monitoring may be addressed in the safety and health plan. Performance and confirmational monitoring may be addressed in separate plans and may be combined with other plans or submittals, such as those in §§ 65-40-201 and 65-40-610. Compliance monitoring plans shall be specific for the media being tested.
- (d) Administrative options. Except as provided in § 65-40-315, interim clean up actions may be conducted under any of the procedures described in § 65-40-305.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The notice of adoption for the 2001 regulations changed the proposed language of subsections (c). See 23 Com. Reg. at 18085 (June 19, 2001).

§ 65-40-210 Periodic Review

- (a) If the Division selects or approves a clean up action that results in harmful substances remaining at a site at concentrations which exceed method A or method B clean up levels established under §§ 65-40-501 through 65-40-560, or if conditional points of compliance have been established, the Division may review the clean up action

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

after the initiation of such clean up action to assure that human health and the environment are being protected.

(b) When evaluating whether human health and the environment are being protected, the factors the Division shall consider shall include:

- (1) The effectiveness of ongoing or completed clean up actions;
- (2) New scientific information for individual harmful substances or mixtures present at the site;
- (3) New applicable Commonwealth and federal laws for harmful substances present at the site;
- (4) Current and projected site uses; and
- (5) The availability and practicability of new remediation technologies.

(c) When the Division determines that substantial changes in the clean up action are necessary to protect human health and the environment at the site, a revised clean up action plan shall be prepared.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-215 Interim Actions

(a) Purpose. The purpose of this section is to describe how certain interim actions can occur. An interim action is:

- (1) An action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a harmful substance at a facility; or
- (2) An action that corrects a problem that may become substantially worse or cost substantially more to address if the action is delayed; or
- (3) An action needed to provide for completion of a site hazard assessment, Commonwealth remedial investigation/feasibility study or design of a clean up action.

(b) General requirements.

(1) Interim actions may:

- (i) Achieve clean up standards for a portion of the site; or
- (ii) Provide a partial clean up, that is, clean up harmful substances from all or part of the site, but not achieve clean up standards; or
- (iii) Provide a partial clean up of harmful substances and not achieve clean up standards, but provide information on how to achieve clean up standards for a clean up.

(2) Relationship to the clean up action:

- (i) If the clean up action is known, the interim action shall be consistent with the clean up action.
- (ii) If the clean up action is not known, the interim action shall not foreclose reasonable alternatives for the clean up action. This is not meant to preclude the destruction or removal of harmful substances.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(c) Timing.

(1) Interim actions may occur anytime during the clean up process. Interim actions shall not be used to delay or supplant the clean up process. An interim action may be done prior to or in conjunction with a site hazard assessment. However, sufficient technical information must be available regarding the facility to ensure the interim action is appropriate and warranted.

(2) Interim actions shall be followed by additional remedial actions unless compliance with clean up standards has been confirmed at the site.

(3) The Division shall set appropriate deadlines commensurate with the actions taken for completion of the interim action.

(d) Administrative options. Except as provided in § 65-40-315, interim clean up actions may be conducted under any of the procedures described in § 65-40-305.

(e) Public participation will be accomplished in a manner consistent with § 65-40-401.

(f) Submittal requirements. Unless otherwise directed by the Division and except for emergencies, a report shall be prepared prior to conducting an interim action. Reports prepared under an order or decree shall be submitted to the Division for review and approval. Reports shall be of a scope and detail commensurate with the work performed and site-specific characteristics, and shall include, as appropriate:

(1) A description of the interim action and how it will meet the criteria identified in subsections (a) and (b) of this section;

(2) Information from the applicable subsections of the remedial investigation/feasibility study of § 65-40-115, including at a minimum;

(i) A description of existing site conditions and a summary of all available data related to the interim action;

(ii) Alternative interim actions considered, including no interim action, and an explanation why the proposed alternative was selected;

(3) Information from the applicable subsections of the design and construction requirements of § 65-40-201;

(4) A compliance monitoring plan meeting the applicable requirements of § 65-40-205;

(5) A safety and health plan meeting the requirements of § 65-40-605; and

(6) A sampling and analysis plan meeting the requirements of § 65-40-610.

(g) Construction. Construction of the interim action shall be in conformance with § 65-40-201(g).

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-220 Institutional Controls

(a) Purpose. Institutional controls are measures undertaken to limit or prohibit activities that may interfere with the integrity of an interim action or clean up action or

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

result in exposure to harmful substances at a site. Such measures shall be required to assure both the continued protection of human health and the environment and the integrity of an interim action or clean up action in the following circumstances:

(1) Where a clean up action results in residual concentrations of harmful substances which exceed method A or method B clean up levels, as applicable, established under part 500; or

(2) If conditional points of compliance have been established; or

(3) When the Division determines such controls are required to assure the continued protection of human health and the environment or the integrity of the clean up action.

(b) Institutional controls shall not be used as a substitute for clean up actions that would otherwise be technically possible, as determined by the Division.

(c) Institutional controls include:

(1) Physical measures, such as fences and signs, to limit activities that may interfere with the clean up action or result in exposure to harmful substances at the site; and

(2) Legal and administrative mechanisms to limit site use or activities and/or to ensure that any physical measures are maintained over time. Examples of limits on site use activities include restricting the use of a property for industrial or commercial purposes or other specified land uses, or placing restrictions on activities such as disturbing a cap or using the ground water. Examples of maintenance activities include, inspection and repair of monitoring wells, treatment systems, caps or ground water barrier systems.

(d) Format.

(1) For properties owned by a person who has been named as a potentially liable person or who has not been named a potentially liable person by the Division but meets the criteria for being named a potentially liable person, appropriate institutional controls shall be described in a restrictive covenant on the property. The covenant shall be executed by the property owner and recorded. This restrictive covenant shall run with the land, and be binding on the owner's successors and assigns.

(2) For properties containing harmful substances where the owner does not meet the criteria for being a potentially liable person, the Division may approve clean up actions which include restrictive covenants or other legal and/or administrative mechanisms. The use of legal or administrative mechanisms which do not include restrictive covenants is intended to apply to situations where the release has affected properties near the source of the release not owned by a person potentially liable under the act. Examples of such mechanisms include zoning overlays, placing notices in local zoning or building Division records or Commonwealth lands records, public notices and educational mailings.

(e) Financial assurances. The Division may require the potentially liable person to provide financial assurances, through a trust fund or equivalent financial mechanism approved by the Division, sufficient to cover all costs of operation and maintenance including compliance monitoring and undertaking appropriate corrective measures. It is the Division's expectation that such assurances will be required wherever the clean up action includes containment and in other appropriate circumstances.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(f) Removal of restrictions. If the residual harmful substances remaining at the site are subsequently reduced in concentration such that the method A or method B clean up levels, as applicable, established under §§ 65-40-501 through 65-40-560 are met without a conditional point of compliance, then the owner may request that the restrictive covenant or other restrictions be eliminated. The restrictive covenant or other restrictions shall be removed, if the Division, after public notice and opportunity for comment, concurs.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-225 Evacuation

(a) Purpose. The purpose of this section is to describe when an evacuation should take place and how the evacuation should proceed.

(b) General requirements. Upon a determination that risks posed by a release or threatened release of harmful substances or activities related to the clean up of any release present an unacceptable risk based upon:

- (1) Apparent hazards or health risks;
- (2) The exposure assessment conducted as part of any site hazard assessment under § 65-40-110; or
- (3) The risk assessment conducted as part of any remedial investigation and feasibility study under § 65-40-115;

the* Division may, in its discretion, recommend to the Governor that evacuation of an area designated by the Division be undertaken. If the Governor orders such an evacuation, among other things, the Division may require the potentially liable person to relocate all persons within the designated area to an area approved by the Division. Relocation may, in the Division's discretion, require the potentially liable person to acquire suitable housing as determined by the Division, and may require, in addition to relocation of persons, the relocation of livestock, domestic animals, and personal effects. Once the unacceptable risk has been removed, as determined by the Division, the Division may require the potentially liable person to accomplish a relocation of the evacuated persons, livestock, domestic animals, and personal effects, to the area that was originally evacuated.

(c) Timing. Evacuations may occur any time during the clean up process. Evacuations shall not be used to delay or supplant the clean up process.

(d) Public participation will be accomplished in a manner consistent with § 65-40-401; however, as evacuation is generally time critical, the Division, in its discretion, may limit public participation as necessary.

(e) Administrative options. Evacuation may be conducted under any of the procedures described in § 65-40-305.

* So in original.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-230 Routine Clean Up Actions

Routine clean up actions. Flexibility in the scope of investigations and in combining steps may be particularly appropriate for routine clean up actions. For example, the Division may decide to approve a routine clean up action based upon a single investigation that includes a site hazard assessment and a simplified Commonwealth remedial investigation/feasibility study and site remedial design plan.

- (a) A clean up action may be considered routine if, in its discretion, the Division determines that the following criteria are met:
 - (1) It uses a clean up method that is reliable and has proven capable of accomplishing clean up standards;
 - (2) Clean up standards that provide an adequate margin of safety for protection of human health and the environment for each harmful substance addressed by the clean up are clear under applicable law or can be easily identified by the Division; and
 - (3) The Division has experience with similar actions.
- (b) Clean up of ground water will not normally be considered a routine clean up action.
- (c) A routine clean up action may be conducted under any of the procedures described in § 65-40-305.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Part 300 - Administrative Procedures for Remedial Actions

§ 65-40-301 Determination of Status as a Potentially Liable Person

- (a) Status letter. The Division shall issue a potentially liable person status letter to any person it believes to be potentially liable. Persons may be notified when the Division has a reasonable belief of their potential liability and when the Division is ready to proceed with remedial action except for emergencies and initial investigations. The status letter shall be sent by certified mail, return receipt requested, or by personal service.
- (b) Contents of letter. The status letter may provide:
 - (1) The name of the person the Division believes to be potentially liable;
 - (2) A general description of the location of the facility;
 - (3) The basis for the Division's belief that the person has a relationship to the facility;

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

- (4) The basis for the Division's belief that a release or threatened release of a harmful substance has occurred at the facility and that the release or threatened release poses a threat to human health or the environment;
 - (5) An indication of the Division's intentions regarding enforcement or other actions at the facility; and
 - (6) The names of other persons to whom the Division has sent a status letter.
- (c) Opportunity to comment. The recipient of a potentially liable person status letter may respond by providing comments to the Division. Any comments shall be submitted in writing to the Division within fifteen days from the date of receipt by the potentially liable person of the status letter unless the Division provides an extension.
- (d) Determination of status. If after reviewing any comments submitted, the Division concludes that the facts support a finding of potential liability, then the Division shall issue a determination of potentially liable person status.
- (e) Voluntary waiver. Persons may accept status as a potentially liable person at any time through a voluntary waiver of their right to notice and comment.
- (f) Additional potentially liable persons. The Division reserves the right to notify additional potentially liable persons at any time, and as resources permit, will facilitate potentially liable persons' efforts to identify additional potentially liable persons.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-305 Administrative Options for Remedial Actions

- (a) Policy. It is the responsibility of each and every liable person to conduct remedial actions so that sites are cleaned up well and expeditiously where a release or threatened release of a harmful substance requires remedial action. Potentially liable persons are encouraged to initiate discussions and negotiations with the Division in the presence of the Office of the Attorney General which may lead to an agreement on the remedial action to be conducted. Any approval by the Division or the Commonwealth of a remedial action shall occur by one of the means described in subsections (b) and (c) of this section.
- (b) Action initiated by the potentially liable person. Potentially liable persons may initiate a remedial action, as follows:
- (1) A person may initiate negotiations for a consent decree by submitting a letter under § 65-40-310(a).
 - (2) A person may request an agreed order by submitting a letter under § 65-40-315.
- (c) Action initiated by the Division. The Division may initiate a remedial action by:
- (1) Issuing a letter inviting negotiations on a consent decree under § 65-40-310(b); or

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(2) Proceeding with an enforcement action under § 65-40-320.

(d) Division remedial action. Nothing in this regulation shall preclude the Division from taking appropriate remedial action on its own at any time. Except for emergency actions and initial investigations, reasonable effort will be made to notify potentially liable persons prior to the Division taking remedial actions.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-310 Consent Decrees

(a) Initiated by potentially liable persons. To request a consent decree a person shall submit a letter to the Division and a copy to the Office of the Attorney General via certified mail, return receipt requested, or by personal delivery.

(1) Request. The letter shall describe, based on available information:

(i) The proposed remedial action, including the schedule for the work;

(ii) Information which demonstrates that the settlement will lead to a more expeditious clean up, be consistent with clean up standards if the remedial action is a clean up action, and be consistent with any previous orders;

(iii) The facility, including location and boundaries;

(iv) The environmental problems to be addressed including a description of the releases at the facility and the potential impact of those releases to human health and the environment;

(v) A summary of the relevant historical use or conditions at the facility;

(vi) The date on which the potentially liable person will be ready to submit a detailed proposal;

(vii) Any special scheduling considerations for implementing the remedial actions;

(viii) Names of other persons who the person has reason to believe may be potentially liable persons at the facility; and

(ix) A proposed public participation plan. This proposed plan shall be commensurate with the nature of the proposal and site and shall include the elements listed in § 65-40-401(h).

(2) The letter may include:

(i) Acceptance, for purposes of settlement, of potentially liable person status.

(ii) The contents of detailed proposal under (a)(6) of this section.

(3) Recognizing that the steps of the clean up process may be combined and may vary by site, the information in the request shall be at the level of detail appropriate to the steps in the process for which the consent decree is requested. For example, a request for a consent decree for a Commonwealth remedial investigation/feasibility study should generally include the level of information needed for a site hazard assessment so that the Division and the public can evaluate the proposed scope of work.

(4) The Division may waive part of the letter requirements of (a)(1) of this section if the requirements have already been met.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(5) Response. The Division shall respond to the request within sixty days, unless the Division needs additional time to determine potentially liable person status under § 65-40-301. The Division may:

- (i) Request additional information;
- (ii) Accept the request and require the person to submit a detailed written proposal by a specified date; or
- (iii) Provide written reasons for denying the request.

(6) Contents of detailed proposal. The proposal shall contain:

- (i) A proposed technical scope of work describing the remedial action to be conducted;
- (ii) The data, studies, or any other information upon which the settlement proposal is based;
- (iii) A statement describing the potentially liable person's ability to conduct or finance the remedial action as described in the proposed scope of work; and
- (iv) A schedule for proposed negotiations and implementation of the proposed remedial actions.

(7) The Division and the Office of the Attorney General shall determine whether the proposal provides a sufficient basis for negotiations, and shall deliver to the potentially liable person within sixty days following receipt of their proposal a written notice indicating whether or not the proposal is sufficient to proceed with negotiations.

(8) Time limits for negotiations. The Division shall set the time period and starting date for negotiations. The Division with the presence and advice of the Office of the Attorney General shall then negotiate with those potentially liable persons who have received a notice under (a)(5) of this subsection that their proposal was sufficient to proceed with negotiations. Negotiations may address one or more phases of remedial action.

(9) Enforcement stay. Unless an emergency exists, the Division will stay any enforcement action, but the duration of such stay shall, not exceed one hundred twenty days from the date negotiations begin. The Division can withdraw from negotiations if it determines that:

- (i) Reasonable progress is not being made toward a consent decree acceptable to the Division; or
- (ii) The proposal is inappropriate based on new information or changed circumstances.
- (iii) The Division may commence with enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

(b) Commonwealth-initiated procedures. When the Division believes that a consent decree will be a more expeditious method to achieve remedial action at a facility, it may initiate the procedures set forth in this subsection by sending a letter to the potentially liable person. The letter shall be sent via certified mail, return receipt requested, or by personal service.

(1) The letters may be delivered with potentially liable person status letters issued under § 65-40-301. The period for negotiation shall not commence until the thirty day comment period required by § 65-40-301 has expired or the person expressly waives the procedural requirements of § 65-40-301.

(2) Contents of letter. The letter shall:

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

- (i) Inform potentially liable person(s) that the Division with the presence and advice of the Attorney General wants to begin negotiations which may lead to a consent decree providing for remedial action;
 - (ii) Propose a draft consent decree and scope of work;
 - (iii) Define the negotiation process and schedule which shall not exceed ninety days;
 - (iv) Reference the Division's finding under § 65-40-301;
 - (v) Request a written statement of the potentially liable person's willingness to proceed with the negotiation process defined in the letter; and
 - (vi) Request the names of other persons whom the person has reason to believe may be potentially liable persons at the facility.
- (3) The letter may request the potentially liable person to respond, in writing, to the proposed draft consent decree and scope of work prior to initiating the negotiation phase.
- (4) Negotiations. The Division with the presence and advice of the Office of the Attorney General shall negotiate with potentially liable persons who have indicated to the Division a willingness to proceed with the negotiations. The negotiation time frame shall begin from the date the potentially liable person receives the letter under (b)(1) of this section unless modified by the Division. Negotiations may address one or more phases of remedial action.
- (5) Enforcement stay. Unless an emergency exists, the Division will stay any enforcement action, but the duration of the stay shall not exceed ninety days from the date negotiations begin. The Division can withdraw from negotiations if it determines that:
- (i) Reasonable progress is not being made toward a consent decree acceptable to the Division; or
 - (ii) The proposal is inappropriate based on new information or changed circumstances.
 - (iii) The Division may commence with enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.
- (6) Deadline extensions. The Division may at its discretion extend the deadline for negotiations, provided the extension does not exceed thirty days.
- (c) Filing a decree. After satisfying public comment and hearing requirements, the Division shall determine whether the proposed settlement negotiated under subsection (a) or (b) of this section, is more expeditious and consistent with clean up standards established and in compliance with any order issued by the Division relevant to the remedial action. After making the requisite findings, the Division shall forward the proposed consent decree with the findings, to the Office of the Attorney General. If agreed to by the Office of the Attorney General, the consent decree will be filed by that office with the appropriate court having jurisdiction over the matter.

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

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The final paragraphs of subsections (a)(9) and (b)(5) were not designated. The Commission designated subsections (a)(9)(iii) and (b)(5)(iii), respectively.

In subsection (b)(2)(i), the Commission changed "want" to "wants" to correct a manifest error.

§ 65-40-315 Agreed Orders

(a) Agreed orders may be used for all remedial actions. Since an agreed order is not a settlement, an agreed order shall not provide a covenant not to sue, or protection from claims for contribution. An agreed order means that the potentially liable person agrees to perform remedial actions at the site in accordance with the provisions of the agreed order and that the Division will not take additional enforcement action against the potentially liable person to require those remedial actions specified in the agreed order so long as the potentially liable person complies with the provisions of the order. The Division may require additional remedial actions should it deem such actions necessary.

(b) Request.

(1) To request an agreed order, a person shall submit a letter to the Division based on available information, describing:

- (i) The proposed remedial action including a schedule for the work;
- (ii) The facility, including location and boundaries;
- (iii) The environmental problems to be addressed, including the releases at the facility and the potential impact of those releases to human health and the environment;
- (iv) A summary of the relevant historical use or conditions at the facility;
- (v) Names of other persons whom the person has reason to believe may be potentially liable persons at the facility; and
- (vi) A proposed public participation plan. This proposed plan shall be commensurate with the nature of the proposal and site and shall include at a minimum the elements listed in § 65-40-401(h).

(2) The letter may include an acceptance, for purposes of the agreed order, of potentially liable person status.

(3) Recognizing that the basic steps of the clean up process may be combined and may vary by site, the information in the request shall be at the level of detail appropriate to the step in the process for which the order is requested. For example, a request for an agreed order for a Commonwealth remedial investigation/feasibility study should generally include the level of information needed for a site hazard assessment, so that the Division and the public can evaluate the proposed scope of work and relative priority of the site.

(4) The Division may waive part of the letter requirements of (b)(1) of this section if the requirements have already been met.

(c) Response. The Division shall respond to the request within sixty days, unless the Division needs additional time to determine potentially liable person status under § 65-40-301. The Division may:

- (1) Request additional information;
- (2) Proceed with discussions, if the Division believes it is in the public interest to do so; or
- (3) Provide written reasons for denying the request.

(d) Discussions on the agreed order shall not exceed sixty days unless the Division decides continued discussions are in the public interest. Unless an emergency exists, the Division will stay any enforcement action; however, the duration of such stay shall not

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

exceed sixty days from the date discussions begin. Furthermore, the Division can withdraw from discussions if it determines that:

- (1) Reasonable progress is not being made toward an agreed order acceptable to the Division; or
- (2) The agreed order is inappropriate based on new information or changed circumstances.
- (3) The Division may commence with enforcement action after notifying the potentially liable person in writing of its intent to withdraw from discussions.

(e) Focus of discussions. The focus of discussions for the agreed order shall ordinarily be the technical scope of work and work schedule. This subsection is not intended to preclude discussion on any item. It is intended to convey the expectation that the scope of work and work schedule will be the primary topics of discussion in formulating agreed orders.

(f) When issuing an agreed order, the Division shall provide appropriate public participation opportunities under § 65-40-401. If the agreed order is for a routine clean up action and any person requests judicial review, then the applicable consent decree procedures under § 65-40-310 will be initiated.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The final paragraph of subsection (d) was not designated. The Commission designated it subsection (d)(3).

§ 65-40-320 Enforcement Orders

(a) The Division may issue an enforcement order, either as a compliance order or administrative order, requiring a potentially liable person to take any action required either under this chapter or by any consent decree, agreed order, or enforcement order issued pursuant to this chapter.

(b) Procedure.

(1) Concurrently or after issuing a notice of potentially liable person status letter under § 65-40-301, the Director may issue a potentially liable person a notice of violation and request for corrective action (NOV/RCA), if the requirements in this chapter are not being satisfied by a potentially liable person. The NOV/RCA shall state the nature of the violation and set forth a detailed schedule of actions, including applicable deadlines, that must be completed to avoid further administrative action.

(2) If the schedule of actions included in a NOV/RCA are not completed in a manner consistent with the NOV/RCA, or if the Director determines an NOV/RCA is not appropriate, the Director may issue the potentially liable person either an initial compliance order (ICO) or an initial administrative order (IAO).

(i) Initial compliance order (ICO). An ICO shall state the nature of the violation and set forth a detailed schedule of actions, including applicable deadlines, that must be

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

completed. An NOV/RCA is not required prior to the issuance of an ICO. The ICO shall not require the payment of civil fines or penalties retroactive to the date of the violation; however, it may provide for appropriate prospective penalties for violations of the compliance order in accordance with the CNMI Environmental Protection Act.

(A) Upon receipt of an ICO, the potentially liable person may request a conference with the Division. The request must be made in writing and received by the Division within ten days from issuance of the ICO.

(B) The ICO will become a final compliance order (FCO) ten days after issuance of the ICO, if a conference is not timely requested.

(C) If a conference is timely requested, the Division shall set a date for and meet with the potentially liable person to discuss resolving the violation.

(D) If the Division and the potentially liable person reach an agreement, the violation can be resolved by consent decree or agreed order.

(E) If the Division and the potentially liable person do not reach an agreement, the director may issue an FCO or proceed with an IAO in accordance with subsection (b)(2)(ii).

(ii) Initial administrative order (IAO). An IAO shall state the nature of the violation and set forth a detailed schedule of actions, including applicable deadlines, that must be completed. The IAO may propose appropriate civil fines or penalties as allowed under the Act, including fines retroactive to the date of the violation. Such fines or penalties are due and payable to the CNMI Treasury only in accordance with a FAO after opportunity for a hearing in accordance with this section.

(A) Upon receipt of an IAO, the potentially liable person may request an enforcement hearing before the Director. The request must be made in writing and received by the Division within ten days from issuance of the IAO. The written request for an enforcement hearing shall state the circumstances or arguments which the potentially liable person intends to present at the enforcement hearing.

(B) The IAO will become a final administrative order (FAO) ten days after issuance of the IAO, if an enforcement hearing is not timely requested.

(iii) Enforcement hearings. If an enforcement hearing is timely requested, the Department shall set a date for the hearing and inform the potentially responsible person of the time and place. Enforcement hearings shall be informal hearings, however the provisions of 1 CMC § 9109(g) and (h) shall apply. The Director shall preside over the enforcement hearing.

(A) Evidence. The Director shall control the taking of testimony and evidence. Evidence presented at an enforcement hearing need not conform with the prescribed rules of evidence, but may be limited by the Director in any manner she/he reasonably determines to be just and efficient and promote the ends of justice. The standard of proof for such a hearing and decision shall be by the preponderance of the evidence.

(B) Final administrative order. The Director shall issue a final administrative order within thirty days after the completion of the enforcement hearing. The final decision must be written and will include findings and conclusions and the basis for the findings and conclusions.

(iv) Appeals of final orders. Any appeal from a final compliance order or final administrative order shall be to the Commonwealth Superior Court within thirty days from the issuance of the final order.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(v) Service. Service of initial compliance orders, final compliance orders, initial administrative orders and final administrative orders shall be by personal service or certified U.S. mail, return receipt requested.

(c) Judicial enforcement. The Division may initiate civil and/or criminal actions in the Commonwealth Superior Court through and with the approval of the Commonwealth's Office of Attorney General as necessary to enforce the regulations in this chapter and any consent decree, agreed order, or enforcement order issued pursuant to this chapter.

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

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The Commission corrected the word "reasonable" in subsection (b)(2)(iii)(A) to "reasonably" pursuant to 1 CMC § 3806(g).

Part 400 - Public Participation

§ 65-40-401 Public Notice and Participation

(a) Purpose. The Division's goal is to provide the public with timely information and meaningful opportunities for participation which are commensurate with each site. The Division may meet this goal through a public participation program that includes: the early planning and development of a site-specific public participation plan; the provision of public notices; a site register; and public meetings.

(b) In order to promote effective and meaningful public participation, the Division may determine that public participation opportunities in addition to those specifically enumerated herein are appropriate and should be provided.

(c) Public notice. Whenever public notice is required or when the Division deems it appropriate, the Division shall provide or require notice as described in this section.

(1) Request. Notice shall be mailed to persons who have made a timely request. A request for notice is timely if received prior to or during the public comment period for the current phase of remedial action at the facility. However, the receipt of a request for notice shall not require the Division to extend the comment period associated with the notice.

(2) Mail. Notice shall be mailed to persons who reside within the potentially affected vicinity of the proposed action. The potentially affected vicinity shall include all property adjoining the site and any other area that the Division determines to be directly affected by the proposed action.

(3) Newspaper publication. Notice of the proposed action shall be published in the newspaper circulated in the area of the proposed action, by one or more of the following methods: display ad; legal notice; or any other appropriate format, as determined by the Division.

(4) Comment periods. All public notices shall indicate the public comment period on the proposed action. Unless stated otherwise, comment periods shall be thirty days, at a minimum.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(5) Combining public comment requirements. Whenever reasonable, the Division may consolidate public notice and opportunities for public comment under this part with public notice and comment requirements under other laws and regulations.

(d) Public meetings. During any comment period announced by a public notice issued under this part, if ten or more persons request a public meeting on the subject of the public notice, the Division may hold a public meeting for the purpose of receiving comments.

(e) Additional methods. In addition to “public notice” described in subsection (c) of this section, the Division may use any of the following methods to provide information to the public:

- (1) Press releases;
- (2) Fact sheets;
- (3) Public meetings;
- (4) Publications;
- (5) Personal contact by Division employees;
- (6) Posting signs at the facility;
- (7) Notice in the site register; and
- (8) Any other methods as determined by the Division.

(f) Site register. The Division shall maintain a site register. The site register shall be made available upon five days notice.

(g) Evaluation. As part of requiring or conducting a remedial action at any facility, the Division may evaluate public participation needs at the facility, including an identification of the potentially affected vicinity for the remedial action.

(h) Public participation plans.

(1) Scope. The public participation plans are intended to encourage a coordinated and effective public involvement tailored to the public’s needs at a particular facility. The scope of a plan shall be commensurate with the nature of the proposed remedial actions; the level of public concern; and the risks posed by the facility.

(2) Early planning encouraged. In order to develop an appropriate plan, public participation needs at the facility should be assessed in an early planning process. This process may include identifying and conferring with individuals, community groups, local governments, public agencies, or any other organizations that may have an interest in or knowledge of the facility.

(3) Plan development. The Division shall develop the plan, or work with the potentially liable person to develop the plan. If a plan already exists for a facility, the Division shall consider whether the existing plan is still appropriate or whether the plan should be amended. For example, a plan originally developed to address a Commonwealth remedial investigation/feasibility study may need to be amended to address implementation phases.

(4) Plan as part of order or decree. A potentially liable person will ordinarily be required to submit a proposed public participation plan as part of its request for an agreed

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

order or a consent decree. If a plan already exists for the facility, the potentially liable person may either resubmit the existing plan with any proposed amendments or submit an entirely new proposed plan. The proposed plan may be revised during the course of discussions or negotiations on the agreed order or consent decree. The final public participation plan may become part of the agreed order or consent decree.

(5) Contents. The public participation plan shall include the following:

(i) Applicable public notice requirements and how these will be met, including: when public notice will occur; the length of the comment periods accompanying each notice; the potentially affected vicinity and any other areas to be provided notice, to the extent known.

(ii) Information repositories. The plan should identify at least one location where the public can review information about the remedial action. Multiple locations may be appropriate.

(iii) Methods of identifying the public's concerns. Such methods may include: interviews; questionnaires; meetings; contacts with community groups or other organizations which have an interest in the site; establishing citizen advisory groups for sites; or obtaining advice from the appropriate citizens' advisory committee.

(iv) Methods of addressing the public's concerns and conveying information to the public. These may include any of the methods listed in subsection (e) of this section.

(v) Coordination of public participation requirements. The plan should identify any public participation requirements of other applicable federal, Commonwealth or local laws, and address how such requirements can be coordinated. For example, if the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) applies to the proposed action, the plan should explain how CERCLA and this part's public comment periods will be coordinated.

(vi) Amendments to the plan. The plan should outline the process for amending the plan. Any amendments must be approved by the Division.

(vii) Any other elements that the Division determines to be appropriate for inclusion in the final public participation plan.

(6) Implementation. The Division shall retain approval authority over the actions taken by a potentially liable person to implement the plan.

(i) Consent decrees. In addition to any other applicable public participation requirements, the following shall be required for consent decrees.

(1) A public participation plan which meets the requirements of subsection (h) of this section shall be developed when required.

(2) Notice of negotiations. When the Division decides to proceed with negotiations, it shall place a notice in the site register advising the public that negotiations have commenced. This notice shall include the name of the facility, a general description of the subject of the order, and the deadlines for negotiations.

(3) Notice of proposed decree. The Division shall provide or require public notice of a proposed consent decree. The notice may be combined with notice of other documents under this part, such as a clean up action plan, or notice under other laws. The notice shall briefly:

(i) Identify and generally describe the facility;

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

- (ii) Identify the nature of the release, suspected harmful substances, and potential risks to health and the environment.
 - (iii) Identify the person(s) who are parties to the consent decree;
 - (iv) Generally describe the remedial action proposed in the proposed consent decree; and
 - (v) Invite the public to comment. The public comment period shall run for at least thirty days from the date of the issuance of the notice.
- (4) Revisions. If the Commonwealth and the potentially liable person agree to substantial changes to the proposed consent decree, the Division shall provide additional public notice and opportunity to comment.
- (j) Agreed orders. In addition to any other applicable public participation requirements, the following shall be required for agreed orders under § 65-40-315.
- (1) Public participation plan. A plan meeting the requirements of subsection (h) of this section shall be developed when required.
- (2) Notice of discussions. When the Division decides to proceed with discussions it shall place a notice in the site register advising the public that discussions have commenced. This notice shall include the name of the facility, a general description of the subject of the order and the deadlines for discussions.
- (3) Notice of agreed orders. Public notice shall be provided by the Division for any agreed order. For agreed orders covering a Commonwealth remedial investigation/feasibility study, the comment period shall be at least thirty days and shall be completed before the agreed order becomes effective. For other agreed orders, the agreed order may be effective before the comment period is over, unless the Division determines it is in the public interest to complete the public comment period prior to the effective date of the agreed order. The Division may determine that it is in the public interest to provide public notice prior to the effective date of any agreed order or to hold a public meeting or hearing on the agreed order. This notice shall briefly:
- (i) Identify and generally describe the facility;
 - (ii) Identify the person(s) who are parties to the order;
 - (iii) Generally describe the release and potential hazards and risks to health and the environment;
 - (iv) Generally describe the remedial action proposed in the proposed order; and
 - (v) Invite the public to comment on the proposed order.
- (4) Revisions. If the Division and the potentially liable person agree to substantial changes to the proposed order, the Division shall provide additional public notice and opportunity to comment as appropriate.
- (k) Enforcement orders. In addition to any other applicable public participation requirements, the Division shall provide public notice of all enforcement orders.
- (1) Contents of notice. All notices shall briefly:
- (i) Identify and generally describe the facility;
 - (ii) Identify the person(s) who are parties to the order;
 - (iii) Generally describe the release and potential hazards and risks to health and the environment;
 - (iv) Generally describe the terms of the proposed order; and

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(2) The Division may amend the order on the basis of public comments. The Division shall provide additional public notice and opportunity to comment if the order is substantially changed.

(l) Commonwealth remedial investigation/feasibility study. In addition to any other applicable public participation requirements, the following shall be required during a Commonwealth remedial investigation/feasibility study.

(1) Scoping. When the Division performs or requires a potentially liable person to perform a Commonwealth remedial investigation/feasibility study, public notice and an opportunity to comment on the scope of the Commonwealth remedial investigation/feasibility study will be provided or required.

(2) Report. The Division shall provide or require public notice of Commonwealth remedial investigation/feasibility study reports prepared under § 65-40-115. This public notice may be combined with public notice of the draft clean up action plan. At a minimum, public notice shall briefly:

(i) Describe the site and Commonwealth remedial investigation/feasibility study results;

(ii) If available, identify the Division's selected clean up action and provide an explanation for its selection;

(iii) Invite public comment on the report. The public comment period shall extend for at least thirty days from the date of issuance of the public notice.

(m) Selection of clean up actions. In addition to any other applicable public participation requirements, the Division shall:

(1) Require notice of availability of draft or final clean up action plans and a brief description of the proposed or selected alternative in the site register;

(2) Provide public notice of the draft clean up action plan. A notice of a draft clean up plan may be combined with notice on the Commonwealth remedial investigation/feasibility study. Notice of a draft clean up action plan may be combined with notice on a draft consent decree or on an order. At a minimum, public notice shall briefly:

(i) Describe the site;

(ii) Identify the proposed clean up action and provide an explanation for its selection;

(iii) Invite public comment on the draft clean up action plan. The public comment period shall run for at least thirty days from the date of issuance of the public notice.

(n) Clean up action implementation. In addition to any other applicable public participation requirements, the following shall be required during clean up action implementation.

(1) Public notice and opportunity to comment on any plans prepared under § 65-40-201 that represent a substantial change from the clean up action plan.

(2) Public notice and an opportunity to comment shall be provided on the site remedial design report.

(o) Interim actions. In addition to any other applicable public participation requirements, the following will be required for interim actions.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

- (1) Public notice shall be provided for any proposed interim actions. This public notice shall be combined with public notice of an order or settlement whenever practicable.
- (2) At a minimum, public notice shall briefly:
 - (i) Describe the site;
 - (ii) Identify the proposed action including selected contractor (if applicable) and cost to the Commonwealth;
 - (iii) Identify the likely or planned schedule for the action;
 - (iv) Reference any planning documents prepared for the action;
 - (v) Identify Division staff who may be contacted for further information; and
 - (vi) Invite public comment on the interim action. The public comment period shall extend for at least thirty days from the date of the issuance of public notice.

- (p) Routine clean up. Public notice and comment shall be provided for routine clean ups as the Division deems appropriate.

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

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: In subsection (e), the Commission changed “describe” to “described” to correct a manifest error. The Commission inserted a comma after the word “order” in subsection (i)(2) pursuant to 1 CMC § 3806(g).

Part 500 - Clean Up Standards

§ 65-40-501 Overview of Clean Up Standards

- (a) Purpose. This section provides an overview of the methods for establishing clean up standards that apply to a release or threatened release of a harmful substance at a site. If there are any inconsistencies between this section and any specifically referenced section, the referenced section shall govern.

- (b) Clean up standards versus selection of clean up actions.
 - (1) Clean up standards are identified for the particular harmful substances at a site and the specific areas or pathways, such as land or water, where humans and the environment may be exposed to these substances. This part provides uniform methods Commonwealth-wide for identifying clean up standards and requires that all clean ups under the act meet these standards. The actual degree of clean up may vary from site to site and will be determined by the clean up action alternative selected under § 65-40-120. Establishing clean up standards for individual sites requires the specification of the following:
 - (i) Harmful substance concentrations that protect human health and the environment (“clean up levels”);
 - (ii) The location on the site where those clean up levels must be attained (“points of compliance”); and
 - (iii) Additional regulatory requirements that apply to a clean up action because of the type of action and/or the location of the site. These requirements are specified in

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

applicable Commonwealth and federal laws and are generally established in conjunction with the selection of a specific clean up action.

(2) For most sites, there are several clean up technologies or combinations of clean up technologies (“clean up action alternatives”) that may be used to comply with clean up standards at individual sites. Other parts of this rule govern the process for planning and deciding on the clean up action to be taken at a site. For example, § 65-40-115 (Commonwealth remedial investigation and feasibility study) (RI/FS) specifies the studies that are prepared to define the nature and extent of contamination (“RI”) and to identify and evaluate clean up action alternatives (“FS”). Section 65-40-120 (selection of clean up actions) specifies the criteria for selecting the preferred alternative. Section 65-40-205 specifies the monitoring required to assure that the remedy is effective.

(3) The Division recognizes that clean up actions selected under § 65-40-120 may involve containment of harmful substances. In these cases, the clean up action may be determined to comply with clean up standards, provided the compliance monitoring program is designed to ensure the long-term integrity of the containment system, and the other requirements for containment technologies in § 65-40-120(g) are met.

(c) Three basic methods for establishing clean up levels. These rules provide three approaches for establishing clean up levels:

(1) Method A: On some sites, the clean up action may be routine (§ 65-40-230) or may involve relatively few harmful substances. Under method A, clean up levels for harmful substances are established at concentrations at least as stringent as concentrations specified in applicable Commonwealth and federal laws. Method A clean up levels for harmful substances not addressed under applicable Commonwealth and federal laws are established at concentrations which do not exceed the natural background concentration for the substance in question.

(2) Method B: Standard method. Method B is the standard method for determining clean up levels for ground water, surface water, and soil. Clean up levels for individual harmful substances are established using applicable Commonwealth and federal laws or the criteria specified in §§ 65-40-540 through 555. For individual carcinogens, clean up levels are based upon the upper bound of the estimated excess lifetime cancer risk of one in one million (1×10^{-6}). For individual non-carcinogenic substances, clean up levels are set at concentrations which are anticipated to result in no acute or chronic toxic effects on human health and the environment. Where a harmful substance site involves multiple harmful substances and/or multiple pathways of exposure, method B clean up levels for individual substances must be modified in accordance with the procedures in § 65-40-530. Under this method, the total excess lifetime cancer risk for a site shall not exceed one in one hundred thousand (1×10^{-5}) and the hazard index for substances with similar non-carcinogenic toxic effects shall not exceed one.

(3) Method C: Conditional method. Compliance with clean up levels developed under the method A or B may be impossible to achieve or may cause greater environmental harm. In those situations, or where DEQ determines otherwise appropriate, method C clean up levels for individual harmful substances may be established on the basis of applicable Commonwealth and federal laws and a site-specific risk assessment. For individual carcinogens, method C clean up levels are based upon the upper bound of the estimated lifetime cancer risk of one in one hundred thousand (1×10^{-5}). For individual

non-carcinogenic substances, method C clean up levels are set at concentrations which are anticipated to result in no acute or chronic toxic effects on human health and no significant adverse effects on the protection and propagation of aquatic and terrestrial organisms. Where a harmful substance site involves multiple harmful substances and/or multiple pathways of exposure, method C clean up levels for individual substances must be modified in accordance with the procedures in § 65-40-530. Under this method, the total excess lifetime cancer risk for a site shall not exceed one in one hundred thousand (1×10^{-5}) and the hazard index for substances with similar non-carcinogenic toxic effects shall not exceed one.

(d) Additional requirements for setting clean up levels. Several requirements apply to clean ups under any of the three basic methods. Some of these requirements, such as the identification of applicable Commonwealth and federal laws, describe analyses used along with methods A, B or C in order to set clean up levels for particular substances at a site. Others describe the technical procedures to be used.

(1) Applicable Commonwealth and federal laws. The clean up standards in these rules must be “at least as stringent as all applicable Commonwealth and federal laws.” In addition to establishing minimum requirements for clean up standards, applicable Commonwealth and federal laws may also impose certain technical and procedural requirements for performing clean up actions. These requirements are described in § 65-40-535 and are similar to the “ARAR” (applicable, relevant and appropriate requirements) approach of the federal Superfund law at 42 U.S.C. § 9621, and 40 C.F.R. §§ 300.400, et seq.

(2) Cross-media contamination. In some situations, migration of harmful substances from one medium may cause contamination in a second media. For example, the release of harmful substances in soil may cause ground water contamination. Under methods A, B, and C, clean up levels must be established at concentrations which prevent violations of clean up levels for other media following implementation of the clean up action.

(3) Risk assessment procedures. The analyses performed under methods B and C use several factors for defining clean up levels for carcinogens and non-carcinogens. When developing clean up standards based upon risk assessment, Commonwealth risk assessment practices shall be applied. Federal risk assessment guidance may be used when no Commonwealth risk assessment guidance and or procedures exist. However, risk criteria established under methods B and C shall be maintained in applying federal risk assessment guidance. Section 65-40-530 also provides rules for use of indicator, harmful substances.

(4) Natural background. Clean up levels shall not exceed concentrations established under methods A, B, or C except where the natural background concentration is greater than the clean up level established under those methods. In such situations, the clean up level shall be established at a concentration equal to the natural background concentration.

(e) Threshold criteria for all clean up actions. Section 65-40-120 specifies that all clean up actions conducted under this chapter shall protect human health and the environment, comply with clean up standards and applicable Commonwealth and federal laws, and provide for compliance monitoring. These are the threshold criteria and all clean up

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

actions must meet these criteria regardless of other factors such as cost or technical limitations.

(f) Measuring compliance. Setting clean up standards also involves being able to demonstrate that they have been met. This involves specifying where on the site the clean up levels must be met (“points of compliance”), how long it takes for a site to meet clean up levels (“restoration time frame”), and conducting sufficient monitoring to demonstrate that the clean up standards have been met and will continue to be met in the future. The provisions for establishing points of compliance are in §§ 65-40-540 through 65-40-550. The provisions for establishing restoration time frames are in § 65-40-120.

(g) Administrative principles for clean up standards.

(1) Remedial actions under this chapter shall be conducted in a manner that is consistent with this section. This section shall be used in combination with the more specific sections in part 500 of this chapter and § 65-40-120.

(2) Establishing clean up standards and selecting an appropriate clean up action involves many technical and public policy decisions. This chapter is intended to constrain the range of decisions needed to be made on individual sites to promote expeditious clean ups.

(3) The act contains policies which states, in part, that each person has a right to a clean and healthful environment. Consistent with this policy, clean up standards under this chapter shall be established which provide conservative estimates of human health and environmental risks.

(4) Clean up standards under this chapter shall be established which protect human health and the environment for current and potential future site and resource uses.

(5) Clean up actions that achieve clean up levels under methods A, B, or C (as applicable) and comply with applicable Commonwealth and federal laws shall be presumed to be protective of human health and the environment.

(6) Except as provided for in applicable Commonwealth and federal laws, cost shall not be a factor in determining what clean up level is protective of human health and the environment. In addition, where specifically provided for in this chapter, cost may be appropriate for certain other determinations related to clean up standards. Cost may be considered when selecting an appropriate clean up action.

(7) At many sites, there is more than one harmful substance and more than one pathway for harmful substances to get into the environment. For many sites there is more than one technology that could address each of these. When evaluating clean up action alternatives it is appropriate to consider a representative range of technologies that could address each of these as well as different combinations of these technologies to accomplish the overall site clean up.

(8) The clean up of a particular media of a site will often affect other media at the site. These cross-media impacts shall be considered when establishing clean up standards and selecting a clean up action. Clean up actions conducted under this chapter shall use appropriate engineering controls or other measures to minimize these cross-media impacts and prevent exceeding harmful concentrations in other media as defined in applicable Commonwealth and federal laws.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(9) In general, clean up levels must be met throughout a site before the site will be considered to be clean, particularly in high exposure areas, including residences, schools, day care facilities, and playgrounds. A remedy that leaves harmful substances on a site in excess of clean up levels may qualify as a clean up action as long as the remedy is protective of human health and the environment, meets clean up levels at specified points of compliance, complies with applicable Commonwealth and federal laws, provides for adequate monitoring, and incorporates appropriate institutional controls. However, these rules are intended to promote thorough clean ups rather than long-term partial clean ups or containment measures.

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

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The notice of adoption for the 2001 regulations changed the proposed language of subsections (c)(3), (d)(3) and (g)(3). See 23 Com. Reg. at 18085 (June 19, 2001). The Commission corrected the word “policies” in subsection (g)(3) to “a policy” and inserted a comma after the letter “B” in subsection (g)(5) pursuant to 1 CMC § 3806(g).

§ 65-40-505 General Policies

(a) Purpose. This section defines the policies and principles that the Division shall utilize to ensure that clean up standards under this chapter are established and implemented in a scientifically and technically sound manner.

(b) Relationship to federal clean up law. When evaluating clean up actions performed under the federal clean up law, the Division shall consider § 65-40-120 and §§ 65-40-501 through 65-40-560 to be a legally applicable requirement under section 121(d) of the federal clean up law.

(c) Regulation update. The Division may review and, as appropriate, update §§ 65-40-501 through 65-40-560.

(d) Institutional controls. Institutional controls under § 65-40-220 shall be required whenever a clean up action results in residual concentrations of harmful substances which exceed method A or method B clean up levels, as applicable, or conditional points of compliance are approved by the Division under §§ 65-40-540 through 65-40-560.

(e) Burden of proof. Any person responsible for undertaking a clean up action under this chapter who proposes to establish a clean up level under method C or a conditional point of compliance shall have the burden of demonstrating to the Division that requirements in this part have been met to assure protection of human health and the environment. The Division shall only approve clean up levels under method C or conditional points of compliance when it determines that the person undertaking the clean up actions met this burden of proof.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(f) New scientific information. The Division shall consider new scientific information when establishing clean up levels for individual sites.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-510 Use of Method A

(a) Method A may be used if approved by the Division to establish clean up levels at the following types of sites:

- (1) Sites undergoing routine clean up actions as defined in § 65-40-510; or
- (2) Sites where numerical standards are available in applicable Commonwealth and federal laws for all indicator harmful substances in all media of concern.

(b) Method A clean up levels shall be established in accordance with the procedures in §§ 65-40-540 through 65-40-560. Method A clean up levels shall be at least as stringent as all of the following:

- (1) Concentrations of individual harmful substances established under applicable Commonwealth and federal laws; and
- (2) For individual harmful substances not addressed under (b)(1) of this section, concentrations that do not exceed natural background levels for the substance in question.

(c) The Division may establish method A clean up levels more stringent than those required by subsection (b) of this section, when based on a site-specific evaluation, the Division determines that such levels are necessary to protect human health and the environment.

(d) If there are any inconsistencies between this section and any specifically referenced sections, the referenced section shall govern.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-515 Use of Method B

(a) Method B shall be applied to all sites unless method A or method C is approved by the Division.

(b) Method B clean up levels shall be established in accordance with the procedures in §§ 65-40-540 through 65-40-560. Method B clean up levels shall be at least as stringent as all of the following:

- (1) Concentrations of individual harmful substances established under applicable Commonwealth and federal laws;

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

- (2) Concentrations which are estimated to result in no adverse effects on the protection and propagation of aquatic and terrestrial life;
- (3) Those concentrations which protect human health and the environment as determined by the following methods:
- (i) Concentrations which are estimated to result in no acute or chronic toxic effects on human health as determined using a hazard quotient of one in accordance with available Commonwealth risk assessment guidance and/or procedures using default exposure parameters established in available federal public health evaluation manuals. PRGs based on default exposure parameters described in federal risk assessment guidance may be used when no Commonwealth risk assessment guidance and/or procedures exist;
 - (ii) For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one million (1×10^{-6}) in accordance with available Commonwealth risk assessment guidance and/or procedures using default exposure parameters established in available federal public health evaluation manuals. PRGs based upon an upper bound cancer risk of one in a million (1×10^{-6}) using default exposure parameters described in federal risk assessment guidance may be used when no Commonwealth risk assessment guidance and/or procedures exist; and
 - (iii) Concentrations which eliminate or minimize the potential for food chain contamination.
- (c) The Division may establish method B clean up levels that are more stringent than those required by subsection (b) of this section, when based upon a site-specific evaluation, the Division determines that such levels are necessary to protect human health and the environment.
- (d) Concentrations of individual harmful substances established under subsections (b) and (c) of this section, including those based on applicable Commonwealth and federal laws, shall be adjusted downward to take into account exposure to multiple harmful substances and/or exposure resulting from more than one pathway of exposure. These adjustments shall be made in accordance with the procedures in § 65-40-530. In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in one hundred thousand (1×10^{-5}). These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single harmful substance by one exposure pathway, including clean up levels based on applicable Commonwealth and federal laws.
- (e) If there are any inconsistencies between this section and any specifically referenced sections, the referenced section shall govern.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The notice of adoption for the 2001 regulations changed the proposed language of subsection (b)(3). See 23 Com. Reg. at 18085 (June 19, 2001).

§ 65-40-520 Use of Method C

(a) Method C clean up levels represent concentrations which are protective of human health and the environment for specified site uses. A site (or portion of a site) that qualifies for a method C clean up level for one medium does not necessarily qualify for a method C clean up level in other media. Each medium must be evaluated separately using the criteria applicable to that medium. Method C clean up levels may be established where the person conducting the clean up action can demonstrate that such levels comply with applicable Commonwealth and federal laws, that all practicable methods of treatment are utilized, that institutional controls are implemented in accordance with § 65-40-220, and that one or more of the following conditions exist:

(1) Where method A or B clean up levels are below area background concentrations, method C clean up levels may be established at concentrations that are equal to area background concentrations, but in no case greater than concentrations specified in subsection (b) of this section; or

(2) Where attainment of method A or B clean up levels has the potential for creating a significantly greater overall threat to human health or the environment than attainment of method C clean up levels established under this chapter, method C clean up levels may be established at concentrations which minimize those overall threats, but in no case greater than concentrations specified in subsection (b) of this section. Factors that shall be considered in making this determination include:

- (i) Results of a site-specific risk assessment;
- (ii) Duration of threats;
- (iii) Reversibility of threats;
- (iv) Magnitude of threats; and
- (v) Nature of affected population.

(3) Where method A or B clean up levels are below technically possible concentrations, method C clean up levels may be established at the technically possible concentrations, but in no case greater than levels specified in subsection (b) of this section.

(4) Where DEQ determines otherwise appropriate.

(b) Method C clean up levels shall be established in accordance with the criteria in §§ 65-40-540 through 65-40-560. Method C clean up levels shall be at least as stringent as all of the following:

- (1) Concentrations established under applicable Commonwealth and federal laws;
- (2) Concentrations which are estimated to result in no significant adverse effects on the protection and propagation of aquatic and terrestrial life;

(3) Those concentrations which are protective of human health and the environment as determined by the following methods:

- (i) Concentrations which are estimated to result in no significant adverse acute or chronic toxic effects on human health as estimated using a hazard quotient of one in accordance with Commonwealth risk assessment guidance and/or procedures using default exposure parameters established in public health evaluation manuals. PRGs based on default exposure parameters described in federal risk assessment guidance may be used when no Commonwealth risk assessment guidance and/or procedures exist;

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(ii) For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one hundred thousand (1×10^{-5}) in accordance with Commonwealth risk assessment guidance and/or procedures using default exposure parameters established in public health evaluation manuals. PRGs based upon an upper bound cancer risk of one in a one hundred thousand (1×10^{-5}) using default exposure parameters described in federal risk assessment guidance may be used when no Commonwealth risk assessment guidance and/or procedures exist; and

(iii) Concentrations which eliminate or minimize the potential for food chain contamination.

(c) The Division may establish method C clean up levels that are more stringent than those required by subsection (b) of this section when based upon a site-specific evaluation, the Division determines that such levels are necessary to protect human health and the environment.

(d) Concentrations of individual harmful substances established under subsections (b) and (c) of this section, including those based on applicable Commonwealth and federal laws, shall be adjusted downward to take into account exposure to multiple harmful substances and/or exposure resulting from more than one pathway of exposure. These adjustments shall be made in accordance with § 65-40-530. In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in one hundred thousand (1×10^{-5}). These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single harmful substance by one exposure pathway, including clean up levels based on applicable Commonwealth and federal laws.

(e) If there are any inconsistencies between this subsection and any specifically referenced sections, the referenced section shall govern.

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

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The notice of adoption for the 2001 regulations changed the proposed language of subsection (b)(3) and added a new subsection (a)(4). See 23 Com. Reg. at 18085 (June 19, 2001).

§ 65-40-525 Analytical Considerations

[Reserved.]

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-530 Human Health Risk Criteria

(a) Purpose. This section defines the risk assessment framework that the Division will utilize to establish clean up levels.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(b) Selection of indicator harmful substances.

(1) When defining clean up requirements at a site that is contaminated with a large number of harmful substances, the Division may eliminate from consideration those harmful substances that contribute a small percentage of the overall threat to human health and the environment. The remaining harmful substances shall serve as indicator harmful substances for purposes of defining site clean up requirements.

(2) If the Division considers this approach appropriate for a particular site, the factors evaluated when eliminating individual harmful substances from further consideration shall include:

(i) The toxicological characteristics of the harmful substance that influence its ability to adversely affect human health or the environment relative to the concentration of the harmful substance at the site;

(ii) The chemical and physical characteristics of the harmful substance which govern its tendency to persist in the environment;

(iii) The chemical and physical characteristics of the harmful substance which govern its tendency to move into and through environmental media;

(iv) The natural background concentrations of the harmful substance;

(v) The thoroughness of testing for the harmful substance at the site;

(vi) The frequency that the harmful substance has been detected at the site; and

(vii) Degradation by-products of the harmful substance.

(3) When the Division determines that the use of indicator harmful substances is appropriate for a particular site, it may also require biological testing to address potential toxic effects associated with harmful substances eliminated from consideration under this subsection.

(c) Reasonable maximum exposure.

(1) Clean up levels shall be based on estimates of current and future resource uses and reasonable maximum exposures expected to occur under both current and potential future site use conditions.

(2) The reasonable maximum exposure is defined as the highest exposure that is reasonably expected to occur at a site under current and potential future site use. Sections 65-40-540 through 65-40-560 define the reasonable maximum exposures for ground water, surface water, and soil. These reasonable maximum exposures will apply to most sites where individuals or groups of individuals are or could be exposed to harmful substances.

(3) Persons performing clean up actions under this chapter may utilize the evaluation criteria in §§ 65-40-520 through 65-40-560 to demonstrate that the reasonable maximum exposure scenarios specified in those sections are not appropriate for a particular site. The use of an alternate exposure scenario shall be documented by the person performing the clean up action. Documentation for the use of alternate exposure scenarios shall be based on the results of investigations performed in accordance with § 65-40-115.

(4) Individuals or groups of individuals may be exposed to harmful substances through more than one exposure pathway. For example, a person may be exposed to harmful substances from a site by drinking contaminated ground water, eating contaminated fish, and breathing contaminated air. At sites where the same individuals or groups of individuals are or could be consistently exposed through more than one pathway, the

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

reasonable maximum exposure shall represent the total exposure through all of those pathways. At such sites, the clean up levels derived for individual pathways under §§ 65-40-540 through 65-40-560 shall be adjusted downward to take into account multiple exposure pathways.

(d) Clean up levels for individual harmful substances. Clean up levels for individual harmful substances will generally be based on a combination of requirements in applicable Commonwealth and federal laws and risk assessment.

(e) Multiple harmful substances.

(1) Clean up levels for individual harmful substances established under methods B and C shall be adjusted downward to take into account exposure to multiple harmful substances. Adverse effects resulting from exposure to two or more harmful substances with similar types of toxic response are assumed to be additive unless scientific evidence is available to demonstrate otherwise.

(2) Cancer risks resulting from exposure to two or more carcinogens are assumed to be additive unless scientific evidence is available to demonstrate otherwise.

(3) For purposes of establishing clean up levels for non-carcinogens under methods B and C, the health threats resulting from exposure to two or more harmful substances with similar types of toxic response may be apportioned between those harmful substances in any combination as long as the hazard index does not exceed one.

(4) For purposes of establishing clean up levels for carcinogens under methods B and C, the cancer risks resulting from exposure to multiple harmful substances may be apportioned between harmful substances in any combination as long as the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}).

(5) The Division may require biological testing to assess the potential interactive effects associated with chemical mixtures.

(f) Multiple pathways of exposure.

(1) Estimated doses of individual harmful substances resulting from more than one pathway of exposure are assumed to be additive unless scientific evidence is available to demonstrate otherwise.

(2) Clean up levels based on one pathway of exposure shall be adjusted downward to take into account exposures from more than one exposure pathway. The number of exposure pathways considered at a given site shall be based on the reasonable maximum exposure scenario as defined in subsection (c).

(3) For purposes of establishing clean up levels for non-carcinogens under methods B and C, the health threats associated with exposure via multiple pathways may be apportioned between exposure pathways in any combination as long as the hazard index does not exceed one.

(4) For purposes of establishing clean up levels for carcinogens under methods B and C, the cancer risks associated with exposure via multiple pathways may be apportioned between exposure pathways in any combination as long as the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}).

(g) Methods for defining background concentrations.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(1) Sampling of harmful substances in background areas may be conducted to distinguish site-related concentration from non-site related concentrations of harmful substances or to support the development of a method C clean up level under the provisions of § 65-40-520. For purposes of this chapter, two types of background may be determined, natural background and area background concentrations.

(2) For purposes of defining background concentrations, samples shall be collected from areas that have the same basic characteristics as the medium of concern at the site, have not been influenced by releases from the site and, in the case of natural background concentrations, have not been influenced by releases from other localized human activities.

(3) The statistical method used to evaluate available data shall be appropriate for the distribution of each harmful substance. If the distribution of the harmful substance data is inappropriate for statistical methods based on a normal distribution, then the data may be transformed. If the distributions of individual harmful substances differ, more than one statistical method may be required at a site.

(h) Significant figures. Risk assessment results shall be presented using one significant figure.

(i) Plan. A risk assessment plan shall be submitted to the Division which includes criteria to address risks at the site. The Division may approve, disapprove, or modify the proposed plan. The Division may provide additional guidance as necessary.

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

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-535 Applicable Commonwealth and Federal Laws

(a) Applicable Commonwealth and federal laws.

(1) All clean up actions conducted under this chapter shall comply with applicable Commonwealth and federal laws. For purposes of this chapter, the term “applicable Commonwealth and federal laws” shall include legally applicable requirements and those requirements that the Division determines, based on consideration of the criteria in subsection (c) of this section, are relevant and appropriate requirements.

(2) The person conducting a clean up action shall identify all applicable Commonwealth and federal laws. The Division shall make the final interpretation on whether these requirements have been correctly identified and are legally applicable or relevant and appropriate.

(b) Legally applicable requirements. Legally applicable requirements include those clean up standards, standards of control, and other environmental protection requirements, criteria, or limitations promulgated under Commonwealth or federal law that specifically address a harmful substance, clean up action, location or other circumstances at the site.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(c) Relevant and appropriate requirements. Relevant and appropriate requirements include those clean up standards, standards of control, and other environmental requirements, criteria, or limitations established under Commonwealth or federal law that, while not legally applicable to the harmful substance, clean up action, location, or other circumstance at a site, address problems or situations sufficiently similar to those encountered at the site that their use is well suited to the particular site. Sections 65-40-535 through 65-40-560 identify several requirements the Division shall consider relevant and appropriate for establishing clean up standards. For other regulatory requirements, the following criteria shall be evaluated, where pertinent, to determine whether such requirements are relevant and appropriate for a particular harmful substance, remedial action, or site:

- (1) Whether the purpose for which the statute or regulations under which the requirement was created is similar to the purpose of the clean up action;
- (2) Whether the media regulated or affected by the requirement is similar to the media contaminated or affected at the site;
- (3) Whether the harmful substance regulated by the requirement is similar to the harmful substance found at the site;
- (4) Whether the entities or interests affected or protected by the requirement are similar to the entities or interests affected by the site;
- (5) Whether the actions or activities regulated by the requirement are similar to the clean up action contemplated at the site;
- (6) Whether any variance, waiver, or exemption to the requirements are available for the circumstances of the site;
- (7) Whether the type of place regulated is similar to the site;
- (8) Whether the type and size of structure or site regulated is similar to the type and size of structure or site affected by the release or contemplated by the clean up action; and
- (9) Whether any consideration of use or potential use of affected resources in the requirement is similar to the use or potential use of the resources affected by the site or contemplated clean up action.

(d) Variances. For purposes of this chapter, a regulatory variance or waiver provision included in an applicable Commonwealth and federal law shall be considered potentially applicable to interim actions and clean up actions and the Division may determine that a particular regulatory variance or waiver is appropriate if the substantive conditions for such a regulatory variance or waiver are met. In all such cases, interim actions and clean up actions shall be protective of human health and the environment.

(e) New requirements. The Division shall consider new applicable Commonwealth and federal laws as part of the periodic review under § 65-40-210. Clean up actions shall be evaluated in light of these new requirements to determine whether the clean up action is still protective of human health and the environment.

(f) Selection of clean up actions. To demonstrate compliance with § 65-40-120, clean up actions shall comply with all applicable Commonwealth and federal laws in addition to the other requirements of this chapter.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(g) Interim actions. Interim actions conducted under this chapter shall comply with legally applicable requirements. The Division may also determine, based on the criteria in subsection (c) of this section, that other requirements, criteria, or limitations are relevant and appropriate for interim actions.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The Commission corrected the phrase “sections... identifies” in subsection (c) to “sections... identify” pursuant to 1 CMC § 3806(g).

§ 65-40-540 Ground Water Clean Up Standards

(a) General considerations.

(1) Ground water clean up levels shall be based on method B criteria, unless otherwise deemed appropriate by the Division. The Division recognizes that there may be sites where method A or method C standards may be more appropriate. In the event of a release of a harmful substance, treatment, removal, or containment measures shall be conducted to reduce the concentration of the harmful substance in ground water to a concentration consistent with the regulations in this chapter.

(2) Releases of harmful substances to ground waters of the Commonwealth shall not directly or indirectly cause violations of surface water, sediments, soil, or air clean up standards established under this chapter or other applicable Commonwealth and federal laws.

(b) Method A clean up levels.

(1) Method A clean up levels shall be concentrations established under applicable Commonwealth and federal laws, including the following requirements:

(i) Maximum contaminant levels established under the Safe Drinking Water Act and published in 40 C.F.R. 141;

(ii) Maximum contaminant levels established by the Commonwealth as published under the Act and the regulations that implement those statutes.

(2) The Division may establish method A clean up levels more stringent than those required by (b)(1) of this section when, based upon site-specific evaluations, the Division determines that such levels are necessary to protect human health and the environment.

(3) Clean up levels to protect beneficial uses of ground water shall be established by the Division under methods B or C, as appropriate.

(c) Method B clean up levels.

(1) Method B clean up levels shall be at least as stringent as all of the following:

(i) Concentrations established under applicable Commonwealth and federal laws, including the requirements in subsection (b)(1) of this section;

(ii) For harmful substances for which sufficiently protective, health-based criteria or standards have not been established under applicable Commonwealth and federal laws, those concentrations which protect human health and the environment. The Division may

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

issue guidance to further explain how to determine concentrations that will protect human health and the environment.

(2) The Division may establish method B clean up levels that are more stringent than those required by subsection (c)(1) of this section, when, based on site-specific evaluations, the Division determines such levels are necessary to protect human health and the environment. This may include the following:

- (i) Concentrations which are necessary to protect sensitive sub-groups;
- (ii) Concentrations which eliminate or minimize the potential for food chain contamination;
- (iii) Concentrations which eliminate or minimize the potential for damage to soils or biota in the soils which could impair the use of the soil for agricultural or silvicultural purposes;
- (iv) Concentrations which eliminate or minimize the potential for the accumulation of vapors in buildings or other structures to concentrations which pose a threat to human health or the environment; and
- (v) Concentrations which protect nearby surface waters. In general, these will be based on attaining surface water clean up levels in the surface water as close as technically possible to the point or points where the ground water flows into the surface water.

(3) Method B clean up levels to protect beneficial uses of ground water other than drinking water shall be established by the Division on a case-by-case basis.

(d) Method C clean up levels.

(1) Method C clean up levels may be approved by the Division if the person undertaking the clean up action can demonstrate that such levels are consistent with applicable Commonwealth and federal laws, that all practicable methods of treatment have been utilized, that institutional controls are implemented in accordance with § 65-40-220, and that one or more of the conditions in § 65-40-520(a) exist.

(2) The Division may establish method C clean up levels that are more stringent than those required by (d)(1) of this section when, based on a site-specific evaluation, the Division determines such levels are necessary to protect human health and the environment. This may include consideration of those factors listed in subsection (c)(2) of this section.

(3) Method C clean up levels that protect beneficial uses of ground water other than drinking water shall be established by the Division on a case-by-case basis.

(e) Point of compliance.

(1) For ground water, the point of compliance is the point or points where the ground water clean up levels established under subsections (b), (c), and (d) of this section must be attained. Ground water clean up levels shall be attained in all ground waters from the point of compliance to the outer boundary of the harmful substance plume.

(2) The point of compliance shall be established throughout the site from the uppermost level of the saturated zone extending vertically to the lowest most depth which could potentially be affected by the site.

(3) Where harmful substances remain on-site as part of the clean up action, the Division may approve a conditional point of compliance which shall be as close as practicable to the source of harmful substances, not to exceed the property boundary.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

Where a conditional point of compliance is proposed, the person responsible for undertaking the clean up action shall demonstrate that all practicable methods of treatment are to be utilized in the site clean up.

(4) At sites where the affected ground water flows into nearby surface water, the clean up level may be based on protection of the surface water. At these sites, the Division may approve a conditional point of compliance that is located within the surface water as close as technically possible to the point or points where ground water flows into the surface water. Conditional points of compliance may be approved only if the following requirements are met:

- (i) Use of a dilution zone to demonstrate compliance with surface water clean up levels shall not be allowed;
- (ii) Ground water discharges shall be provided with all known available and reasonable methods of treatment prior to release into surface waters;
- (iii) Ground water discharges shall not result in violations of sediment quality values published under the Act and the regulations that implement those statutes; and
- (iv) Ground water monitoring shall be performed to estimate contaminant flux rates and to address potential bioaccumulation problems resulting from surface water concentrations below method detection limits.

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

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The notice of adoption for the 2001 regulations deleted proposed subsection (b)(1)(ii). See 23 Com. Reg. at 18085 (June 19, 2001).

In subsection (d)(2), the original cross-reference was in error. See 23 Com. Reg. at 17813 (Mar. 22, 2001). The Commission corrected the citation so that it refers to subsection (d)(1).

§ 65-40-545 Surface Water Clean Up Standards

(a) General considerations.

(1) Surface water clean up levels shall be based on estimates of the highest beneficial use and the reasonable maximum exposure expected to occur under both current and potential future site use conditions. The classification and the highest beneficial use of a surface water body shall be determined in accordance with of the Act and the regulations that implement those statutes. In the event of a release of a harmful substance, treatment, removal, or containment measures shall be conducted to reduce the level of harmful substances in surface water to concentrations consistent with uses specified under this section and the Act and the regulations that implement those statutes.

(2) Surface water clean up levels established under this section apply to those surface waters of the Commonwealth affected or potentially affected by releases of harmful substances from sites addressed under this chapter. The Division does not expect that clean up standards will be applied to storm water runoff that is in the process of being conveyed to a treatment system that is specifically designed to treat the harmful substance.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(3) Releases of harmful substances to surface waters of the Commonwealth shall not directly or indirectly cause violations of groundwater, soil, sediment, or air clean up standards established under this chapter or other applicable Commonwealth and federal laws.

(b) Method A clean up levels.

(1) Method A clean up levels shall be at least as stringent as concentrations established under applicable Commonwealth and federal laws, including the following requirements:

(i) All water quality criteria published in the water quality standards for surface waters of the Commonwealth;

(ii) Water quality criteria based on the protection of aquatic organisms (acute and chronic criteria) and human health published pursuant to section 304 of the Clean Water Act.

(2) The Division may establish method A clean up levels that are more stringent than those required under subsection (b)(1) of this section, when, based on site-specific evaluations, the Division determines that such levels are necessary to protect human health and the environment.

(c) Method B clean up levels.

(1) Method B clean up levels for surface waters shall be at least as stringent as all of the following:

(i) Concentrations established under applicable Commonwealth and federal laws, including the following requirements:

(A) All water quality criteria published in the water quality standards for surface waters of the Commonwealth; and

(B) Water quality criteria based on the protection of aquatic organisms (acute and chronic criteria) and human health published pursuant to section 304 of the Clean Water Act unless it can be demonstrated that such criteria are not relevant and appropriate for a specific surface water body or harmful substance.

(ii) Concentrations which are estimated to result in no adverse effects on the protection and propagation of wildlife, fish, and other aquatic life;

(iii) For harmful substances for which sufficiently protective, health-based criteria or standards have not been established under applicable Commonwealth and federal laws, those concentrations which protect human health.

(2) The Division may establish method B clean up levels more stringent than those required by subsection (c)(1) of this section, when, based on site-specific evaluations, the Division determines that such levels are necessary to protect human health and the environment.

(d) Method C clean up levels.

(1) Method C clean up levels may be approved by the Division if the person undertaking the clean up action can demonstrate that such levels are consistent with applicable Commonwealth and federal laws, that all practicable methods of treatment have been utilized, that institutional controls are implemented in accordance with § 65-40-220, and that one or more of the conditions in § 65-40-520(a) exist.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(2) Method C clean up levels for surface waters shall be at least as stringent as all of the following:

- (i) Concentrations established under applicable Commonwealth and federal laws, including the requirements identified in subsection (c)(1)(i) of this section;
- (ii) Concentrations which are estimated to result in no significant adverse effects on the protection and propagation of wildlife, fish and other aquatic life;
- (iii) For harmful substances for which sufficiently protective, health-based criteria or standards have not been established under applicable Commonwealth and federal laws, those concentrations which protect human health and the environment. The Division may issue guidance to further explain how to determine concentrations that will protect human health.

(3) The Division may establish method C clean up levels that are more stringent than those required by (d)(2) of this section when, based on site-specific evaluations, the Division determines that such levels are necessary to protect human health and the environment.

(e) Point of compliance.

(1) The point of compliance shall be the point or points at which harmful substances are released to surface waters of the Commonwealth unless the Division has authorized a dilution zone.

(2) Where harmful substances are released to the surface water as a result of ground water flows, no dilution zone shall be allowed to demonstrate compliance with surface water clean up levels.

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

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-550 Soil Clean Up Standards

(a) General considerations.

(1) Presumed exposure scenario soil clean up levels shall be based on estimates of the reasonable maximum exposure expected to occur under both current and future site use conditions. The Division has determined that residential land use is generally the site use requiring the most protective clean up levels and that exposure to harmful substances under residential land use conditions represents the reasonable maximum exposure scenario. Soil clean up levels for this presumed exposure scenario shall be established in accordance with method A or method B clean up levels described in subsections (b) and (c) of this section. In the event of a release of a harmful substance, treatment, removal, and/or containment measures shall be implemented for those soils with harmful substance concentrations which exceed soil clean up levels based on this use unless the following can be demonstrated:

- (i) The property does not serve as a current residential area, childcare facility, or school;

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(ii) The property does not have the potential to serve as a future residential area based on the consideration of zoning, statutory and regulatory restrictions, comprehensive plans, historical use, adjacent land uses, and other relevant factors; and

(iii) Appropriate use restrictions are implemented at the property; or

(iv) More stringent concentrations are necessary to protect human health and the environment.

(2) Relationship between soil clean up levels and other clean up standards. Soil clean up levels shall be established at concentrations which do not directly or indirectly cause violations of ground water, surface water, sediment, or air clean up standards established under this regulation or applicable Commonwealth and federal laws. A property that qualifies for other than a method A or method B soil clean up level under this subsection does not necessarily qualify for other than a method A or method B clean up level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.

(b) Method A clean up levels. Method A clean up levels shall be at least as stringent as method B clean up levels unless determined otherwise by the Division.

(c) Method B clean up levels.

(1) Method B clean up levels for soils shall be at least as stringent as all of the following:

(i) Concentrations established under applicable Commonwealth and federal laws;

(ii) Concentrations which will not cause contamination of ground water at levels which exceed method B ground water clean up levels established under § 65-40-540.

(iii) For those harmful substances for which health-based criteria or standards have not been established under applicable Commonwealth and federal laws, those concentrations which protect human health and the environment. The Division may issue guidance to further explain how to determine concentrations that will protect human health and the environment.

(iv) To assure that unacceptable risks do not result from inhalation of harmful substances in or released from contaminated soils, soil concentrations which ensure that releases of harmful substances shall not result in ambient air concentrations which pose a risk to the public health or environment.

(2) The Division may establish method B clean up levels that are more stringent than those required under (c)(1) of this section, when, based on a site-specific evaluation, the Division determines that such levels are necessary to protect human health or environment, including the following:

(i) Concentrations which eliminate or substantially reduce the potential for food chain contamination;

(ii) Concentrations which eliminate or substantially reduce the potential for damage to soils or biota in the soils which could impair the use of soils for agricultural or silvicultural purposes;

(iii) Concentrations which eliminate or substantially reduce the potential for adverse effects on vegetation or wildlife;

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(iv) Concentrations more stringent than those in (c)(2) of this section where the Division determines that such levels are necessary to protect the ground water at a particular site;

(v) Concentrations necessary to protect nearby surface waters from harmful substances in runoff from the site; and

(vi) Concentrations which eliminate or minimize the potential for the accumulation of vapors in buildings or other structures to concentrations which pose a threat to human health or the environment.

(d) Method C clean up levels.

(1) Method C soil clean up levels may be utilized if the person conducting the clean up action can demonstrate that such levels are consistent with applicable Commonwealth and federal laws, that all practicable methods of treatment have been utilized, that institutional controls are implemented in accordance with § 65-40-220, and that one or more of the conditions in § 65-40-520(a)(1) exist.

(2) Method C clean up levels for soils shall be at least as stringent as all of the following:

(i) Concentrations established under applicable Commonwealth and federal laws;

(ii) Concentrations which will not cause contamination of ground water at levels which exceed ground water clean up levels established under § 65-40-540.

(iii) For those harmful substances for which health-based criteria or standards have not been established under applicable Commonwealth and federal laws, those concentrations which protect human health and the environment. The Division may issue guidance to further explain how to determine concentrations that will protect human health and the environment.

(iv) To assure that unacceptable risks do not result from inhalation of harmful substances in or released, from contaminated soils, soil concentrations which ensure that releases of harmful substances shall not result in ambient air concentrations which pose a risk to the public health or environment.

(e) Point of compliance.

(1) The point of compliance is the point or points where the soil clean up levels established under subsections (b), (c), and (d) of this section shall be attained.

(2) For soil clean up levels based on the protection of ground water, the point of compliance shall be established in the soils throughout the site.

(3) For soil clean up levels based on human exposure via direct contact, the point of compliance shall be established in the soils throughout the site from the ground surface to fifteen feet below the ground surface. This represents a reasonable estimate of the depth of soil that could be excavated and distributed at the soil surface as a result of site development activities.

(4) The Division recognizes that, for those clean up actions selected under § 65-40-120 that involve containment of harmful substances, the soil clean up levels will typically not be met at the points of compliance specified in (e)(2) and (e)(3) of this section. In these cases, the clean up action may be determined to comply with clean up standards, provided the compliance monitoring program is designed to ensure the long-term

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

integrity of the containment system, and the other requirements for containment technologies in § 65-40-120(g) are met.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-555 Clean Up Standards to Protect Air Quality

[Reserved.]

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-560 Sediment Clean Up Standards

[Reserved.]

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Part 600 - Other Requirements

§ 65-40-601 Property Access

(a) Normal entry procedures. Whenever there is a reasonable basis to believe that a release or threatened release of a harmful substance may exist, the Division's authorized employees, agents, or contractors may, after reasonable notice, enter upon any real property, public or private, to conduct investigations or remedial actions. The notice shall briefly describe the reason for requesting access. For the purpose of this subsection, unless earlier access is granted, reasonable notice shall mean:

- (1) Written notice to site owner and operator to the extent known to the Division, sent through the United States Postal Service at least three days prior to entry; or
- (2) Notice to site owner and operator to the extent known to the Division, in person or by telephone at least twenty-four hours prior to entry.

(b) Notification of property owner. The Division will ask a resident, occupant, or other persons in custody of the site to identify the name and address of owners of the property. If an owner is identified who has not been previously notified, the Division will make a prompt and reasonable effort to notify such owners of remedial actions planned or conducted.

(c) Orders and consent decrees. Whenever investigations or remedial actions are conducted under a consent decree or order, a potentially liable person shall not deny access to the Division's authorized employees, agents, or contractors to enter and move freely about the property to oversee and verify investigations and remedial actions being performed.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(d) Ongoing operations. Persons gaining access under this section shall take all reasonable precautions to avoid disrupting the ongoing operations on a site. Such persons shall comply with all applicable Commonwealth and federal safety and health requirements.

(e) Access to documents. The Division's authorized employees, agents or contractors may, after reasonable notice, enter property for the purpose of inspecting documents relating to a release or threatened release at the facility. Persons maintaining such documents shall:

- (1) Provide access during normal business hours and allow the Division to copy these documents; or
- (2) At the Division's request, provide legible copies of the requested documents to the Division.

(f) Emergency entry. Notice by the Division's authorized employees, agents, or contractors is not required for entry onto property to investigate, mitigate, or abate an emergency posed by the release or threatened release of a harmful substance. The Division will make efforts which are reasonable under the circumstances to promptly notify those owners and operators to the extent known to the Division of the actions taken.

(g) Other authorities. Where consent has not been obtained for entry, the Division shall secure access in a manner consistent with Commonwealth and federal law, including compliance with any warrant requirements. Nothing in this chapter shall affect site access authority granted under other Commonwealth laws and regulations.

(h) Access by potentially liable persons. The Division shall make reasonable efforts to facilitate access to real property and documents for persons who are conducting remedial actions under either an order or decree.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

Commission Comment: The Commission inserted a comma after the word "agents" in subsection (a) pursuant to 1 CMC § 3806(g).

§ 65-40-605 Worker Safety and Health

(a) General provisions. Requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651, et seq.) and regulations promulgated pursuant thereto shall be applicable to remedial actions taken under this chapter. These requirements are subject to enforcement by the designated federal and Commonwealth agencies. All governmental agencies and private employers are directly responsible for the safety and health of their own employees and compliance with those requirements. Actions taken by the Division

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

under this chapter do not constitute an exercise of statutory authority within the meaning of section (4)(b)(1) of the Occupational Safety and Health Act.

(b) Safety and health plan. Potentially liable persons responsible for undertaking remedial actions, shall submit a safety and health plan for the Division's review and comment.

Modified, 1 CMC § 3806(d).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-610 Sampling and Analysis Plans

(a) General. A sampling and analysis plan shall be prepared for all sampling activities which are part of investigation and remedial actions unless otherwise directed by the Division and except for emergencies. The level of detail required in the sampling and analysis plan may vary with the scope and purpose of the sampling activity. Sampling and analysis plans shall be submitted to the Division for review and approval.

(b) Contents. The sampling and analysis plan shall specify procedures which ensure that sample collection, handling, and analysis will result in data of sufficient quality to plan and evaluate remedial actions at the site. Additionally, information necessary to insure proper planning and implementation of sampling activities shall be included. References to standard protocols or procedures manuals may be used provided the information referenced is readily available to the Division.

(c) Available guidance. The Division may make available guidance for preparation of sampling and analysis plans.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-615 Analytical and Testing Procedures

Standard analytical procedures and methods shall be used for all actions taken under this chapter. The Division may, in its discretion, require potentially liable persons to obtain preapproval of a laboratory which it proposes to use. Upon request by the Division, all results, including laboratory tests, hydraulic testing, measurements, and surveys, shall be submitted to the Division within two weeks of receipt of the request or receipt of the results, whichever occurs later.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

§ 65-40-620 General Submittal Requirements

Unless otherwise specified by the Division, all reports, plans, specifications, and similar information submitted under this chapter shall meet the following requirements:

- (a) Cover letter. Include a letter describing the submittal and specifying the desired Division action or response.
- (b) Number of copies. Four copies of the plan or report shall be submitted to the Director or Division. The Division may require additional copies to meet public participation and interagency coordination needs. The Division may designate recipients of the copies. A potentially liable person shall provide these copies directly to the designated recipients.
- (c) Visuals. Maps, figures, photographs, tables, plan sheets, drawings, cross-sections shall be submitted consistent with procedures specified by the Division.
- (d) Sampling data. All sampling data shall be submitted consistent with procedures specified by the Division.
- (e) Appendix. Reports and plans shall include an appendix providing the principal information relied upon in preparation of the submittal.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-625 Record Keeping Requirements

- (a) All remedial actions at a facility must be documented with adequate records. Such records may include: Factual information or data; relevant decision documents; and any other relevant, site specific documents or information.
- (b) Unless otherwise required by the Division, records shall be retained for at least ten years from the date of completion of compliance monitoring.
- (c) Records shall be retained by the person taking remedial action, unless the Division requires that person to submit the records to the Division.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-630 Endangerment

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

In the event that the Division determines that any activity being performed at a harmful substance site is creating or has the potential to create a danger to human health or the environment, the Division may direct such activities to cease for such period of time as it deems necessary to abate the danger.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 64-40-640 Project Coordinator

The potentially liable person shall designate a project coordinator for work performed. The project coordinator shall be the designated representative for the purposes of the order or decree. That person shall coordinate with the Division and the public and shall facilitate compliance with requirements of the order or decree.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-645 Emergency Actions

Nothing in this chapter shall limit the authority of the Division, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-650 Miscellaneous

(a) Combining steps. Several steps in the clean up process may be combined into fewer steps, when the Division deems it appropriate. The Division may determine that conditions at a site are such that the remedial investigation/feasibility study and remedial design and implementation steps should be combined into a single step.

(b) Preparation of documents. Except for the initial investigation, any of the studies, reports, or plans used in the clean up process can be prepared by either the Division or the potentially liable person. The Division retains all authority to review and verify the documents submitted and to make decisions based on the documents.

(c) Any person that installs a well, or has a well installed, for the purpose of satisfying the requirements of the regulations in this chapter, shall obtain approval from the Division prior to installation. All testing and construction information obtained from a well shall be submitted to the Division within one week of receipt.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).

§ 65-40-655 Severability

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances shall not be affected.

Modified, 1 CMC § 3806(d).

History: Adopted 23 Com. Reg. 18084 (June 19, 2001); Emergency and Proposed 23 Com. Reg. 17745 (Mar. 22, 2001) (effective for 120 days from Mar. 1, 2001).