

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, MARIANA ISLANDS

VOLUME 23 NUMBER 03



MARCH 22, 2001

COMMONWEALTH

REGISTER

COMMONWEALTH REGISTER

VOLUME 23 NUMBER 03

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COMMONWEALTH PORTS AUTHORITY

Main Office: SAIPAN INTERNATIONAL AIRPORT
P.O. BOX 501055 • SAIPAN • MP 96950-1055
Phone: (1-670) 664-3500/1 FAX: (1-670) 234-5962
E-Mail Address: cpa.admin@saipan.com

PUBLIC NOTICE

PROPOSED REGULATIONS FOR THE CONTROL OF PUBLIC FUNDS UNDER THE JURISDICTION OF THE COMMONWEALTH PORTS AUTHORITY

The Commonwealth Ports Authority, pursuant to its rule-making authority under 2 CMC § 2122(j) and pursuant to the delegation of authority given it by the CNMI Department of Finance, hereby gives public notice of its intention to promulgate regulations that would govern the control of expenditure of public funds which are under the jurisdiction of the Commonwealth Ports Authority, an autonomous agency of the Commonwealth Government. These regulations are being promulgated in accordance with the provisions of the CNMI Administrative Procedure Act, particularly 1 CMC §9102, 9104(a), and 9105. The proposed regulations mirror the Department of Finance regulations on the same subject matter. They include guidelines for expenditures relating to official travel, official representation, allowable expenses, procedure for filing claims for reimbursement, claim forms to use, and so forth.

All interested persons may examine the proposed regulations and submit written comments, position, or statement for or against the proposed regulations, to the Executive Director, Commonwealth Ports Authority, Saipan International Airport, P. O. Box 501055, Saipan, MP 96950, no later than thirty (30) calendar days following the date of publication of this Notice.

Dated this 12th day of February, 2001, at Saipan, Northern Mariana Islands.

COMMONWEALTH PORTS AUTHORITY

By: _____


CARLOS H. SALAS
Executive Director

**Public Notice re Proposed CPA Regulations
re Control of CPA Public Funds
Page 2 of 2**

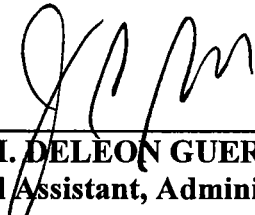
Pursuant to 1 CMC §2153, as amended by Public Law 10-50, the proposed CPA regulations which would govern the control and expenditure of CPA public funds pursuant to a delegation of authority given by the Department of Finance, a copy of which regulations is attached hereto, have been reviewed and approved by the CNMI Attorney General's Office.

HERBERT D. SOLL
Attorney General

By: 
Elliott Sattler
Assistant Attorney General


Date: 13 March 01

RECEIVED BY:



JOSE I. DELEON GUERRERO
Special Assistant, Administration
Date: 03/19/01

FILED BY:



SOLEDAD B. SASAMOTO
Registrar of Corporations
Date: 3/19/01



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NUTISIAN PUPBLIKU

MAPROPOPONI REGULASION PUT MAN'ADAHIN FONDUN PUPBLIKU GI PAPA I JURISDIKSION I COMMONWEALTH PORTS AUTORITY

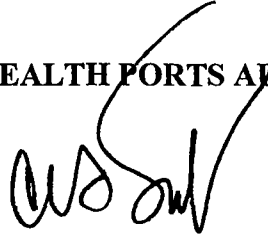
I Commonwealth Ports Authority, sigun gi aturidat para u famatinas areklamento gi papa 2 CMC § 2122(j), yan sigun gi manae-na na aturidat ginen i CNMI Depattamenton i Finance, ginen este ha nutisia i pupbliku put i intension-na para una guaha regulasion i para u gobietna i man'adahin gastun i fondun pupbliku gi papa i jurisdiksion i Commonwealth Ports Authority, an autonomous agency i Gobetnon Commonwealth. Este siha na regulasion man-mapropoponi sigun gi prubinsion i CNMI Administrative Procedure Act, prin-sipatmente i 1 CMC §9102, 9104(a), yan 9105. I ma'propoponi na regulasion ha espeos i regulasion i Departtamenton i Finance ni pareho na manera. A na guahahayi areklamento put guston officiat na kumarera, officiat na representasion, i masedi na gusto, areklamenton para muna halom claims para un maapasi tati, fotman i claims ni para umana-setbe, yan otro siha.

Todu man-interesante siha na petsona, sina ma'eksamina i manma'propoponi siha na regulasion yan sina man'satmiti halom tinige na komentu, pusision, osino sinangan kinentra pat ahi put i manma'propoponi siha na regulasion, guatu gi i Direktot Eksekatibu, Commonwealth Ports Authority, Saipan International Airport, P. O. Box 501055, Saipan, MP 96950, ti u mas di trenta (30) dias despues di mapupblika este na nutisia.

Ma fecha gi mia 12th na dia guine na mes i February, 20 01 giya Saipan, i Sangkattan siha na Islas Marianas.

COMMONWEALTH PORTS AUTHORITY

Ginen as: _____


CARLOS H. SALAS
Direktot Eksekatibu

**Nutusiasian Publiku put Mapropoponi
Regulasion Man-adahin Fondun i CPA
Pajina 2 of 2**


Sigun gi 1 CMC §2153, ni inamenda ni Lai Publiku 10-50, i mapropoponi na regulasion CPA siha ni para u gobetna i man'adahin fondu yan gastun i fondun publiku gi CPA sigun gi i manaina na aturidat ginen i Depattamenton i Finance, i kopian i regulasion mana-chetton guine, ya esta man-ma'ribisa yan maapreba nui i CNMI Ofisinan i Attorney General.

**HERBERT D. SOLL
Attorney General**

Ginen as: /s/
Elliott Sattler
Assistant Attorney General

Fecha: 3/19/01


RINISIBI AS:



JOSE L. DELEON GUERRERO
Special Assistant, Administration

Fecha: 03/19/01

MA FILE AS:



SOLEDAD B. SASAMOTO
Rehistradoran Kotporasion

Fecha: 3/19/01



COMMONWEALTH PORTS AUTHORITY

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E-Mail Address: cpa.admin@saipan.com

POMWOL ALLEGH REEL LEMELEMIL YAAR TOULAP FUNDS IYE E LO FAAL COMMONWEALTH PORTS AUTHORITY

Commonwealth Ports Authority, sangi bwangil reel ffeerul allegh faal 2 CMC §2122(j) bwal sangi bwangil iye e mwetto mereel CNMI Bwulasiyol Finance, iyeey ekke arongaar toulap reel alleghn kkaal iye ebwe lemeli expenditure mereel yaar toulap funds iye e lo faal lemelemil Commonwealth Ports Authority, eew autonomos agency mellol Commonwealth Government. Allegh kkaal nge a arongolo sangi aileewal allegh kkaal mereel CNMI Administrative Procedure Act, eghil mereel 1 CMC §9102, 9104 a bwal 9105. Pomwol allegh kkaal nge ebwal ghol ngali Allegh mellol Bwulasiyol Finance. Eyoor afalafalal expenditures reel mille official travel, official representation, allowable expenses, afal reel tingorol reimbursement, yaayaal claim form bwal akkaaw.

Iyo e tipeli ebwe amweri fischil pomwol allegh kkaal nge ebwe ischilong yaal mangemang weewe schagh reel e tipeli me ngare ese tipeli bwelle reel pomwol allegh kkaal, ngali Executive Director, Commonwealth Ports Authority, Saipan International Airport, P. O. Box 501055, Saipan, MP 96950, nge essobw aluuw lo eliigh ral mwiril ral la e toolong arong yeel.

Ral ye 12th llool maram ye February, 2001, meool Seipel, Metawal Wool Faluwal Marianas.

Carlos H. Salas
Executive Director

**PROPOSED REGULATIONS FOR THE CONTROL
OF PUBLIC FUNDS UNDER THE JURISDICTION OF
THE COMMONWEALTH PORTS AUTHORITY**

- Citation of Statutory Authority:** The Commonwealth Ports Authority (CPA) proposes to promulgate regulations that would govern the control of expenditure of public funds placed under the jurisdiction of the Commonwealth Ports Authority. The regulations are being promulgated: (1) pursuant to a delegation of authority made by the CNMI Department of Finance, the agency given the constitutional authority to control the expenditure of Commonwealth public funds; and (b) pursuant to CPA's rule-making authority under 2 CMC § 2122(j) and 1 CMC §§9102, 9104(a), and 9105.
- Short Statement Goals and Objectives:** The CNMI Department of Finance, which is responsible for the control of expenditure of Commonwealth public funds, has delegated to CPA its authority regarding the subject matter since CPA, an Autonomous, government agency, handles its own financial and accounting matters, independently of the Department of Finance. The delegation given CPA is subject to Finance's oversight authority to monitor and review CPA activities regarding the expenditure of CPA funds. The proposed CPA regulations "mirror" the Department of Finance's regulations on the same subject.
- Brief Summary Of Goals and Objectives:** Like the Department of Finance's Regulations for the Control of Public Funds, CPA's proposed regulations set forth regulatory guidelines regarding expenditure for official travel, for official representation, for official entertainment, and promotional expenses, what expenses are allowable and what are not allowable, the processing of claims for reimbursement, the claims forms to be used, and so forth.
- For Further Information, You May Contact:** Carlos H. Salas, CPA Executive Director at Telephone No. 664-3500.
- Citation to Related or Affected Statutes, Regulations and Orders:** NMI Constitution, Article X, Section 8; Public Law Nos. 11-84 and 12-2; 2 CMC §2122(j); CNMI Department of Finance Regulations for the Control of Public Funds, published in the Commonwealth Register, Vol. 22, No. 9, dated September 20, 2000.

**PROPOSED REGULATIONS GOVERNING
THE CONTROL OF PUBLIC FUNDS
UNDER THE JURISDICTION OF THE
COMMONWEALTH PORTS AUTHORITY**

Section 1. Authority

These regulations are promulgated by the Commonwealth Ports Authority (CPA) pursuant to the delegation of authority given CPA by the Secretary of Finance under Section 1100.14 of the CNMI Department of Finance Regulations For The Control of Public Funds. Section 1100.14 provides for the Department of Finance to delegate to autonomous agencies such as CPA, who handle their own financial and accounting matters, Finance's authority to regulate the expenditure of public funds. The Department of Finance has the authority to regulate and control the expenditure of public funds, pursuant to article X, section 8 of the NMI Constitution.

Section 2. Purpose

- (a) These regulations are intended to provide CPA with the regulatory and control mechanisms regarding the expenditure of public funds placed under the jurisdiction of the Commonwealth Ports Authority. They are also intended to eliminate as much as possible the duplication of financial and accounting measures regarding the control of expenditure of public funds under CPA since CPA handles its own financial and accounting matters, separate and apart from the Department of Finance. At the same time, the Department of Finance retains its overall constitutional responsibility regarding the control of Commonwealth public funds, including CPA funds.
- (b) The basic mission of the Commonwealth Ports Authority, as established by Public Law 2-48, is to develop, manage and operate efficiently and effectively the public airports and seaports of the Commonwealth in order to improve and advance the economy of the Northern Mariana Islands and promote the welfare and well being of its people.

Section 3. Definitions

- (a) Commonwealth Ports Authority (CPA): means the government corporation established by Public Law 2-48, which agency manages and operates the public airports and seaports of the Commonwealth of the Northern Mariana Islands.

- (b) **Commonwealth Government**: means the local government of the Northern Mariana Islands established under the NMI Constitution.
- (c) **Department of Finance (DOF)**: means the CNMI Department of Finance.
- (d) **Expenditure**: means the cost of goods delivered or services rendered, whether paid or unpaid, including current operation costs authorized by an appropriations act.
- (e) **CPA Employee**: A person employed by CPA, whether full-time or part-time.
- (f) **CPA Official**: Any member of the CPA Board, and any of its management officials.
- (g) **CPA Vehicle**: Any vehicle owned, leased or is under the control of CPA.
- (h) **Official Representation**: Expenditures authorized by law to be incurred by the authorized CPA official for entertainment of off-island government guests, or for other expenses to promote goodwill or the public interest and which are permitted pursuant to these regulations.
- (i) **Official Representation and Justification Documentation Form (CPA-OR Form)**: The form for submission of Official Representation expenditures with justification to support the expenditure.
- (j) **Official Justification For Reimbursement Documentation Form (CPA-OJ Form)**. The CPA form for submission of official justification for reimbursement of expenditures.
- (k) **Person**. Any individual, firm, corporation, company, joint venture, association, partnership, receiver, club, syndicate, cooperative association, or any other entity.
- (l) **Personal Expenditure**. An expenditure of public funds for an activity in which a CPA official or employee directly benefits.
- (m) **Political Expenditure**. An expenditure of public funds for an activity, not related to the official duties of the CPA official, in which he or she directly or indirectly benefits through the enhancement of his or her public image.
- (n) **Procedure for Official Representation Delegation of Authority to Incur Expenses**. The procedure by which a CPA official designated under the

definition of "Official Representation" subsection (h) above, may authorize in writing a CPA official or employee to incur expenses for official representation on his/her behalf as described in Section 10 of these regulations.

- (o) **Public Purpose.** It means "public purpose" as defined by Public Law 11-84 and as amended by Public Law 12-2, and shall include, but not be limited to, any purpose that meets one or more of the following criteria:
- (1) The benefits are equally available to the entire community;
 - (2) The service or commodity supplied is one needed by a large number of the community pursuant to customs and traditions, as applicable;
 - (3) The enterprise bears directly and immediately upon the public welfare;
 - (4) The needs to be met, by its nature, require a united effort under unified control and cannot be served well by separate individuals;
 - (5) Where benefits accrue to individuals, the community has an interest in having those individuals benefited (for example, sports teams, school and school-related activities, recognition of individuals and organizations, funerals, or other recognized cultural or community events);
 - (6) The activity or service is in line with the historical development of the Commonwealth and with the general purpose of its constitution and laws;
 - (7) A special emergency exists, such as that brought about by war or public calamity, (for example, typhoons);
 - (8) The expenditure is reasonably related to the operation of government or its objective; in the promotion of the public health, safety, morals, general welfare, security, prosperity; and the contentment of a community of people or residents within the locality, (for example, fiestas and other community celebrations and expenses related, the hosting off-island visitors attending governmental events, meetings, conferences or state funeral expenses);
 - (9) Notwithstanding any other provision of Public Law 11-84, as amended, to the contrary, the expenditures authorized and regulated by legislative

rules and expressly declared to be for a public purpose, unless proved by clear and convincing evidence that the expenditure in fact was for a personal or political activity.

- (10) The expenditure promotes and furthers the mission, goals and objectives of CPA as set forth in Public Law 2-48. Any determination by CPA as to whether an expenditure furthers the mission, goals and objectives of CPA shall be subject to review by the Secretary of Finance.
- (p) Secretary of Finance. The Secretary of the CNMI Department of Finance.
- (q) CPA Board Chairman: means the Chairperson of the CPA Board of Directors and who is the spending authority of CPA under the Planning and Budgeting Act.
- (r) CPA Executive Director: means the Executive Director of the Commonwealth Ports Authority, and who is the chief executive officer of CPA.
- (s) Travel Authorization Form. The Travel Authorization ("TA") Form is a form, which includes the travel itinerary, purpose of the travel, authorized funding, and supporting documentation.
- (t) Travel Voucher Form. The Travel Voucher ("TV") Form is a CNMI government travel voucher claim form submitted to the CPA Executive Director after the completion of travel. The filing of the form is mandatory when funds for travel allowances, per diem, honorarium, or other expenses have been requested and approved.

Section 4. CPA Policy For Official Representation Expenses Incurred for Entertainment and Promotions

- (a) Documentation Required. Official Representation and Official Justification for entertainment and promotional expenses and other governmental business must be completely documented and must at a minimum include (1) the name and position of the persons entertained, (2) the nature and purpose of the expense incurred and its direct relationship to CPA business, (3) a brief description of CPA matters discussed and (4) original receipts and supporting documents must be attached.
- (b) Examples of Personal or Political Expenditures That Are Not Allowable. Because all official representation expenditures and other governmental expenses must be for a public purpose, the following are examples of

expenditures which are not consistent with the CNMI constitutional mandate that an expenditure of public funds be only for a public purpose; therefore, they will be routinely rejected if submitted for payment or reimbursement.

- (1) Personal items such as food or clothing, personal membership fees, and contributions in cash or donation of any tangible or intangible item or product to any person [other than those which meet the definition of "Public Purpose" in Section 3 (o)].
- (2) Personal travel expenditures of individuals for non-CPA purposes or for individual medical treatment, including but not limited to airline tickets, hotel accommodations, meals, gifts, and related expenses.
- (3) Non-CPA business related travel expenditures for individuals, who are not CPA employees or are not doing any work or providing any service to CPA, including but not limited to airline tickets, hotel accommodations, gifts, meals and related expenses.
- (4) Expenses for a private individual's utility, including water, electricity, gas, telephone, and similar payments.
- (5) Expenses for sponsorship of CNMI sports teams.
- (6) Expenses for fund raising activities for private individuals.
- (7) Any expenditure associated with political campaign functions.

Section 5. Official Representation and Justification Documentation Forms

In order to document official representation and other governmental expenditures, CPA has adopted forms called the "Official Representation & Justification Documentation Form (CPA-OR Form)" and the "Official Justification for Reimbursement Documentation Form (CPA-OJ Form)" which set forth the minimum applicable requirements to adequately support payment or reimbursement of expenses for official representation and other expenses requiring justification. Those persons either charging or submitting claims for payment or reimbursement for official representation expenses and other items requiring justification must complete the applicable form and attach to it the copies of vendor receipts. All pertinent details concerning the basis for the expense incurred shall be documented and available for review by the Department of Finance and the Office of the Public

Auditor. The CPA Executive Director may require additional information if necessary.

Section 6. Unallowable or Undocumented Official Representation and Other Expenditures

Unallowable or undocumented official representation and other expenditures will not be reimbursed or paid by CPA. In cases where payments for such unallowable or undocumented expenses have been made from CPA funds such as for travel or other advances, from imprest funds or other government funds, the responsible party who incurred the expense shall pay or reimburse the CPA for such expenditures. If not paid within thirty (30) days, CPA may recover the same, after notice to the individual at issue, through either payroll deductions or any other means authorized by law.

Section 7. CPA Official Representation and Official Justification Procedure for Processing

The CPA Executive Director shall review all vendor billings and receipts covering items of official representation, including any other items requiring justification prior to payment or reimbursement by CPA, such as expenses incurred for official entertainment, CPA celebrations, business meeting luncheons and meals, gifts, fiestas, funerals, school-related expenses or promotional activities. All supporting documentation shall be subject to verification for completeness. The person incurring such expenses is responsible for the preparation and submission of an "Official Representation and Justification Documentation Form" (CPA-OR Form) or an Official Justification for Reimbursement Documentation Form" (CPA-OJ Form) which details all the pertinent information needed to justify either payment or reimbursement of the expense incurred. In addition, CPA's expenditure authority must declare and certify that the expenditure incurred was for a public purpose. As expenses are incurred, the person incurring such expenses shall prepare one of these forms and attach to it all supporting documentation, prior to submission to the Executive Director for his review. The form shall be matched with the vendor statement and related invoices and shall be reviewed for completeness as to all pertinent details. If a submission is determined to be incomplete, the Executive Director shall sent a memorandum to the individual affected, detailing the deficiencies and potential personal liability of the individual, if the incomplete form is not revised or corrected. The procedure shall be the same as in the case of a person submitting an expense report and claiming reimbursement of an expense for official representation or official justification.

Section 8. Procedure for Disallowance and Collection of Official Representation and Other Expenditures

When an official representation or other expenditure is unauthorized or has not been properly supported, the request for payment or reimbursement will be disallowed. In a case where the expenditure has been paid, the CPA official or employee who incurred the expense will be notified and required to promptly repay or reimburse the CPA. If payment or reimbursement has not been made within thirty (30) days of notification of liability, a notice of payroll deduction will be sent indicating that CPA will deduct from the employee's paycheck or apply any reimbursement otherwise due the CPA official or employee to the amount owing. If the official is not a CPA employee, CPA may pursue any legal means to recover the amount owing CPA by the CPA official or individual at issue.

Section 9. Forms for Official Representation and Justification Documentation

The Official Representation and Justification Documentation Form (CPA-OR Form) and Official Justification for Reimbursement Documentation Form (CPA-OJ Form) shall be those prescribed by CPA, which forms shall be similar to those issued by the Department of Finance. The forms may be modified or amended from time to time by CPA. No substitute form will be accepted by CPA.

Section 10. Procedure for Delegation of Official Representation by Expenditure Authority

A CPA official having expenditure authority under the definition of "Official Representation" in Section 3(i) above may authorize in writing a CPA official or employee to incur expenses for official representation, on behalf of CPA, by providing written approval to the official or employee prior to the official or employee undertaking such official representation expense. The written approval shall specifically state the reason (1) why the official or employee is being authorized to incur the official representation expense; (2) the names and positions of persons to be hosted; and (3) the date(s) of hosting. The written delegation allowing official representation expenses to be incurred shall be authorized on a case-by-case basis only, and the written approval from CPA's expenditure authority shall be included as part of the supporting documentation for the expenses incurred. The delegation made and expenses incurred thereunder shall be reviewed by CPA on the same terms

and conditions as if the form had been submitted directly by the authorized CPA expenditure authority.

Section 11. Reimbursement Procedure for Use of Personal Vehicle for Official CPA Business

CPA shall reimburse one's expenses for private vehicles used for official CPA business, using the standard mileage rate method. CPA generally will not reimburse an official or employee for vehicle expenses for government-owned vehicles or heavy equipment vehicles. The mileage reimbursement method excludes reimbursement for fuel, oil, fluids, repairs, labor, maintenance, car payments, rental or lease payments, depreciation, insurance, tires, license or similar fees, parking fees, moving or parking violations, car wash expenses, loan interest, taxes or interest paid on vehicle.

Section 12. Standard Mileage Rate Method

The standard mileage rate is the mileage rate of compensation established by the Office of the Governor for each mile of government use of a private vehicle. The official or employee shall submit to the CPA Executive Director a request for reimbursement, approved by the appropriate CPA division head for mileage reimbursement for private vehicles used for government business, along with a copy of a properly filled out vehicle log record with an original signature for the period covering the reimbursement requested.

Section 13. Vehicle Log Records

Except for CPA emergency vehicles as determined by the Office of the Executive Director, all CPA vehicles shall be equipped with a continuous, vehicle trip log form at all times when in use by CPA officials or employees.

- (a) The government official or employee who requests reimbursement for government use of a private vehicle shall prepare and keep a vehicle log book which shall be maintained by the operator of the private vehicle used for CPA purposes and which shall provide basic trip information such as date, time, places of travel, purpose of travel, beginning and ending speedometer readings, total miles driven, the signature of the vehicle operator and vehicle identification date.

- (b) A vehicle trip log form shall be placed in every non-emergency CPA vehicle and private vehicles used for CPA purposes and maintained by the vehicle operator.
- (c) The CPA official or employee shall certify on a monthly basis the accuracy of the log forms, sign the log sheets, and transmit a copy of the log when requesting reimbursement of expenses for private vehicles used for CPA purpose.
- (d) Failure to maintain these log records shall be grounds for denial of reimbursement of expenses for private vehicles used for CPA purposes.

Section 14. Oversight and Review by the Secretary of Finance of CPA Public Fund Expenditure Activity

The Secretary of Finance retains its overall authority with respect to the control of expenditure of public fund under CPA. The Secretary of Finance may require CPA to file a report in summary form on an annual basis or more frequently when requested, regarding the public fund expenditures of CPA during the year, or on a case-by-case basis, to ensure that the expenditure of public funds by CPA are being made in accordance with these regulations. The Secretary of Finance may require CPA to submit supporting documentation justifying the expenditures made, approved, or incurred by CPA, or any of its directors, officials and employees.

Section 15. Severability

If any provision of these regulations is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulations shall not be affected thereby.

02/12/01

PUBLIC NOTICE

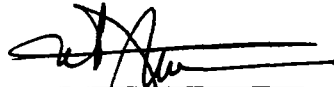
PROPOSED AMENDMENTS TO THE REGULATIONS OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS ELECTION COMMISSION

Pursuant to the authority granted the Election Commission by 1 CMC § 6105(PL 12-18) to promulgate rules and regulations for the administration of Elections in the Commonwealth, the Election Commission, acting through the Chairman on its behalf is proposing to repeal and replace the existing regulations as published at pages 220-304 in the Commonwealth Register Volume 1 No. 8, dated May 16, 1979 and adopted by notice published at page 307 of the Commonwealth Register Volume 1 No. 9, dated June 16, 1979.

The proposed regulations may be inspected at, and copies obtained from, the Election Commission Office in Building 1313 on Capitol Hill. These proposed regulations are published in the Commonwealth Register. The Election Commission is soliciting comments on these proposed regulations from the general public.

Anyone interested in commenting on these proposed regulations may do so in writing addressed to the Election Commission PO Box 500470, Saipan, MP 96950. Written comments may also be delivered to the Election Commission office or faxed to (670) 664-8689. All comments must be received in 30 days from the date this notice is published in the Commonwealth Register.

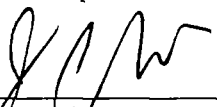
The Election Commission intends to adopt these regulations.

Certified By: 
MIGUEL M. SABLAN
CHAIRMAN
Election Commission

3-15-01
DATE

Filed By: 
SOLEDAD B. SASAMOTO
Registrar of Corporations

3/12/01
DATE

Received by: 
JOSE I. DELEON GUERRERRO
Special Assistant for Administration
Office of the Governor

03/19/01
DATE

Pursuant to 1 CMC 2153, as amended by PL 10-50, the rules and regulations attached hereto have been reviewed and approved by the CNMI Attorney General.

Dated this 15 day of March, 2001

HERBERT D. SOLL
Attorney General


Elliott A. Sauer, Assistant Attorney General

NUTISIAN PUPBLIKU

I MAPROPOPONE SIHA NA AMENDASION GI REGULASION KUMISION ILEKSION COMMONWEALTH I SUMANGKATTAN SIHA NA ISLAS MARIANAS

Sigun aturidat ni mana'e i Kumision Eleksion ginen 1 CMC papa Seksiona 6105(PL 12'18) para u fanmamatinas areklamento yan regulaion para administrasion Eleksion i Commonwealth, Kumision Eleksion, aksion entre Chairman yan enkuenta ni ha propopone para u MAdiroga i presente na regulasion ni manmapupblika gi pahina 220-304 gi Rehistran Commonwealth Baluma 1 Numiru 8, mafecha Matso 16, 1979 yan ma adapta ginen i nutisia ni mapupblika gi pahina 307 Rehistran Commonwealth Baluma 9, mafecha Hunio 16, 1979.

I manpropopone siha na regulasion siña ha manma ina yan fañule kopia gi Ofisinan Kumision Ileksion Guma' Numiru 1313 giya Capitol Hill. Este i manmapropone siha na regulasion esta manamapupblika gi Rehistran Commonwealth. I Kumision Ileksion masosoyu komentu ginen pupbliku para i priniponen este siha na regulasion.

Hayio interesao mamatinas komento put i manmapropopone siha na regulasion siña ha' matuge' papa ya u ma adres guatu para i Kumision Ileksion P.O. Box 500470, Saipan, MP 96950. Todu i manmatuge' siha na kometo siña ha' ha' lokkue' machule' guato gi Ofisinan Kumision Ileksion osino ma fax guatu guine na numiru i (670) 664-8689. Todo komento siha debi di u fnamarisibi halom trenta (30) dias despues di mapupblika huyong este na nutisia gi Rehistran Commonwealth.


I Kumision Ileksion ha' intensina para u adapta este siha na regulasion.

Sinettifika as:


MIGUEL M. SABLAN
CHAIRMAN
ILEKSION KUMISION


3-15-01
FECHA

Ma file
As:


SOLEDAD B. SASAMOTO
Rehistradoran Kotporasion

3/19/01
FECHA

Rinisibi
As:

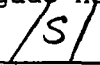

JOSE L. DELEON GUERRERO
Espisiat na Ayudanten Administrasion
Ofisinan Gubetno

03/19/01
FECHA

Sigun 1 CMC2153, ni inamenda ni Lai Pupbliku 10-50, i areklamento yan regulasion siha guine esta manmaribisa yan apreba ginen Ofisinan Abugadun Hinerat.

Ma fecha guine gi mina 15 na dia Matso, 2001

HERBERT D. SOLL
Abugado Henerat


Elliott A. Sattler, Assistant
Attorney Gneral

PROPOSED REGULATIONS OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS ELECTION COMMISSION

Statutory Authority: 1 CMC § 6105 which grants the Election Commission the authority to draft rules and regulations for the orderly conduct of all aspects of elections in the Commonwealth.

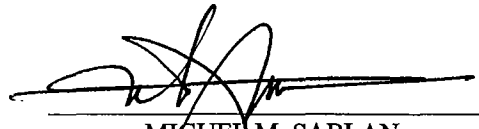
Goals and Objectives: The Commonwealth amended the Election Code in September of 2000, PL 12-18. That law created substantial changes in the election, registration and voting process. It specifically required the Election Commission to re-write the rules and regulations regarding the conduct of elections so that they would be consistent with the new law. These regulations are the Commission's effort to address that law and create fair, precise and uniform rules for all future Commonwealth Elections. These regulations also attempt to address deficiencies in election procedures that were highlighted as a result of the 2000 U.S. Presidential Election.

Brief Summary of the Proposed Rules: These proposed rules are a compliment to the comprehensive Commonwealth Election Law that was passed in September of 2000. It attempts to regulate six (6) major areas as follows: Formation of New Political Parties; Registration; Polling Places; Election Administration; Complaint Process for Election Irregularities; Tabulation and Poll Official Appointment; and Campaign Finance Disclosure. There are many important changes that will be effected by these rules to improve the election process. Those include the prohibition of write-in votes; random selection of candidate and party locations on the ballot. A comprehensive program for mail registration for eligible voters who temporarily reside out of the jurisdiction of the Commonwealth. It creates a fair and uniform process to form a new political party in the Commonwealth. It assigns critical responsibilities to individual government agencies for the investigation of election irregularities and ethics violations involving elections. The previous regulations are almost 22 years old, and these new comprehensive rules and regulations will greatly improve the election process in the Commonwealth.

Contact Person: Interested parties with questions may contact Gregorio C. Sablan, Executive Director of the Election Commission at (670) 664-VOTE (8683). Written comments may be directed to the Election Commission at PO Box 500470 Saipan, MP 96950, faxed to (670) 664-8689 or delivered to the Commission's office on Saipan, Building 1313, Capitol Hill, within 30 days of publication of these proposed rules and regulations.

Related or Effected Statutes, Regulations and Orders: These proposed regulations would effect the comprehensive Election Law, 1 CMC § 6001- 6706, as well as the previous rules and regulations of the now defunct Board of Elections as published in Volume 1 No. 8 pages 220-304, May 16, 1979 in the Commonwealth Register.

Dated: 3-15-01


MIGUEL M. SABLAN
CHAIRMAN
Election Commission

Regulations of the
Commonwealth of the Northern Mariana Islands
Election Commission

Section 1 General Provisions

Section 1.1 Authority. The authority for the adoption and promulgation of the Commonwealth of the Northern Mariana Islands Election Commission Rules and Regulations is by virtue of the authority and directions set forth in 1 CMC §6000 et. seq. and the Commonwealth Administrative Procedures Act, 1 CMC §9101 et. seq.

Section 1.2 Purpose and Scope. The purpose of these rules and regulations is to provide for a fair and impartial treatment of all qualified voters and to ensure the orderly and efficient conduct of all elections in the Commonwealth. These revised regulations replace and supersede existing regulations of the previous Commonwealth of the Northern Mariana Islands Board of Elections as published in the Commonwealth Register No. 1 Volume 8, page 220 , May 16, 1979, as amended.

Section 1.3 Definitions. Unless the context clearly requires a different interpretation, the following terms shall have the following meanings. In addition any term that is defined in the elections law pursuant to 1 CMC §6003, shall have the same definition:

- (a) "Affidavit" means the affidavit of registration form as created by the Election Commission and is duly executed by the person entitled to register under the election laws of the Commonwealth.
- (b) "Ballot Box" means a secure receptacle located in each polling place on election day that a voter deposits their completed ballot into.
- (c) "Citizen" means a person who is a United States Citizen by birth or naturalization as defined in the Commonwealth Constitution.
- (d) "Commission" means the Commonwealth of the Northern Mariana Islands Election Commission.
- (e) "Election" means an election held throughout the Commonwealth every two years on the first Saturday in November. It may also include a special election called pursuant to a proclamation issued by the Governor of the Commonwealth of the Northern Mariana Islands.

- (f) "Eligible Voter" means a person who is qualified and duly registered to vote. A voter is not qualified to vote if after registration there is a change in their status such as they are convicted of a felony, declared of unsound mind or are no longer a resident and domiciliary of the Commonwealth.
- (g) "Observer" means a designate, representative, partisan or other authorized person who is allowed access inside the polling place area for purposes of observing the election process on behalf of their candidate.
- (h) "Person" means a human being or individual.
- (i) "Team" means one pair of candidates who are running for Governor and Lieutenant Governor under the same political party or as independent candidates for those offices.
- (j) "Temporary" means transitory, impermanent, or of the moment.

Section 2 Formation of New Political Parties

Section 2.1 General. Pursuant to 1 CMC §6005, a new political party may be formed prior to an election, pursuant to Uniform Rules and Regulations as adopted by the Election Commission. This section will develop those requirements and rules in order for a new political party to be formed, and for that party to have an opportunity to place its candidates on the ballot for any of the available offices for that election.

Section 2.2 Name of Party. The new political party must have a name and the name cannot be the same or identical of another recognized political party in the Commonwealth. The name must not create confusion with an existing political party. An example of a confusing similar name would be as follows: "The XY Party of the CNMI," and "The CNMI XY Party." Only one of these names would be allowed as it would create confusion on the ballot. The name of the new political party must be clearly identified on the petition sheet.

Section 2.3 Petition Signatures. In order for a new political party to be formed it must present to the Election Commission valid signatures of any number of qualified and registered voters in the Commonwealth. The Election Commission staff, as directed by the Executive Director shall inspect each and every signature submitted to determine that the person is in fact a qualified and registered voter, and that the signature is authentic. Those petitions must swear or affirm that the signatories desire the creation of a new political party in the Commonwealth.

Section 2.4 Party Officers. All new political parties must have a Chairman, Secretary and Treasurer who are duly elected to those offices by members of the party and who signed the petition creating the political party.

No person may hold more than one of those offices within that political party and no person elected as an officer of a new political party may currently hold an office in another "recognized political party."

Section 2.5 Election of Officers. At the same time that the new political party submits its petition signatures it must also submit to the Commission, duly authorized minutes of the election of its officers, that will reflect where the voting occurred, the date and time the voting occurred, who presided over the elections, who was elected to the officer positions of the party, and who was in attendance at the vote and lawfully voted for the officer positions. It is not necessary that all who signed the petition participate in the vote for officers.

Section 2.6 Publicization of the Election of Officers. A new political party shall publicize in advance the date, time and location of its officer elections in a newspaper of general circulation in the Commonwealth.

Section 2.7 Submission of Signatures and Minutes. A new political party shall submit its signatures, list of officers and minutes of their election to the Commission no less than 120 days prior to a general election and no less than 45 days prior to any special election. The submission of signatures and documents shall be accompanied by a fee of \$500.

Section 2.8 Certification. If it appears to the satisfaction of the Commission, on the recommendation of the commission staff that a new political party has met the above requirements, then the commission shall certify that a new political party has been formed within the Commonwealth and shall be allowed a place on the ballot with candidates for any offices it seeks, provided each candidate meets the statutory requirements for inclusion on the ballot as a candidate. A new political party must be certified prior to its submission of nomination papers for its candidates.

After submitting the documents for the formation of a new political party to the commission for formal certification, if the commission fails to act within 30 days of that submission then the new political party shall be considered certified. The decision for the certification of a new political party shall occur at a formal publicly noticed meeting of the Commission.

After a general or special election a new political party must meet the requirements of 1 CMC §6003(o)(3) in order to be a recognized political party and maintain a position on future ballots published by the Commission pursuant to law.

- Section 2.9 Corporate Charter. Nothing in this section shall prevent a new or recognized political party from seeking a charter as a Non-Profit or For-Profit corporation through the Registrar of Corporations, but such status shall be irrelevant in determining whether such party qualifies as a political party in the Commonwealth of the Northern Mariana Islands, as only the Commission shall determine, in accordance with these regulations and the Commonwealth of the Northern Mariana Islands Election law, whether a political party qualifies as a new or recognized political party.

Section 3 Registration

- Section 3.1 General Registration Procedures. The primary method of voter registration shall be in person before a duly authorized registration clerk, a Commission staff person or a Commission member. Any qualified and eligible voter may register at the Commission office in Saipan, at their residence or such other places that the Commission allows for the registration of voters.
- Section 3.2 Registration Affidavit. A voter registers to vote by completing the affidavit, as attached and incorporated herein as Exhibit "A" to these regulations and providing all of the information as required by law, and executing same under the penalty of perjury.
- Section 3.3 Mail Registration. A person otherwise qualified to vote may submit his registration affidavit by mail so long as the registration affidavit is signed and notarized by a commissioned notary public licensed by the state or jurisdiction that the voter resides in or for those eligible voters who are serving in a branch of the United States Armed Forces, to include their eligible voter spouses and eligible voter children, by a Commissioned Officer of the United States authorized to administer an oath. Upon signing and where appropriate notarizing the affidavit, the voter must mail the registration affidavit via either First Class, Priority Mail or Express Mail to the following address:

Commonwealth of the Northern Mariana Islands
Election Commission
PO Box 500470
Saipan, MP 96950

A registration affidavit by mail must be postmarked no later than the date required for registration of all Commonwealth voters in order to vote in a General or Special election. In the event the eligible voter mails the affidavit from such a locale that does not properly affix a postmark, such as a ship or submarine, then the date on the affidavit shall be presumed to be the day that the affidavit was mailed by the eligible voter. If that date is on or before the date the affidavit is due, then the voter shall be presumed to be registered if the commission satisfactorily determines that the voter is eligible.

- Section 3.4 Mail Registration Requirements. As required by law, a person who desires to register by mail must not be physically present in the Commonwealth, and the registration clerk who receives the Registration Affidavit by mail must check the post mark or other such evidence to insure that the individual who submitted the application did not mail it from a location inside the Commonwealth.
- Section 3.5 Residency and Domiciliary Requirements. Any person who is otherwise qualified to register by mail must meet residency and domiciliary requirements pursuant to law, as executed on the affidavit of registration.
- Section 3.6 Public Record Information of Voter Registration. It is understood that nothing in the Commonwealth Election Code or the Open Government Act "as both are presently worded" protects the privacy of the information contained in the Affidavit of Registration. Therefore any person may request information about a voter that is provided on the Voter Registration Affidavit. Only the Social Security Number which is protected by Federal Law shall remain private. Therefore it is the decision of the Commission that the affidavit information shall remain a public record. Nothing in this section can prevent the Commission from changing this requirement should there be a change in either of these laws, that declare this information private.
- Section 3.7 Registration Clerks. Registration clerks shall be all duly employed staff members of the commission, and any commission member or any other person who is properly designated by the commission. Upon receipt of the duly executed affidavit, a registration clerk shall promptly transmit the affidavits to the Commission's offices on Saipan via First-Class Mail in a sealed envelope to the same address identified in Section 3.3 of these regulations or immediately via personal delivery so that the voter's names shall appear on the register. The commission shall ensure registration clerks have enough voter registration affidavits.

Section 3.8 No Refusal Right. No registration clerk shall refuse to register a person seeking to register to vote even if the clerk believes that the person is not qualified to register to vote. Instead the registration clerk shall allow the voter to fill out the affidavit, but shall immediately inform the executive director or a Commission staff person that the person attempting to register to vote might not be eligible to vote in the Commonwealth. The Commission shall then follow the hearing procedures on all such registrations pursuant to Section 3.9.

Section 3.9 Hearings on Challenges of Registrations. As authorized by law, the Commission shall hold hearings on all challenged registrations where it appears that the proposed voter does not meet the qualifications required by Statute to register to vote in the Commonwealth. The hearings shall occur no more than 30 days after the voter submitted their registration affidavit. If the Commission fails to hold a hearing on the challenged registration within the 30-day time period then the challenged registrant will be automatically presumed registered to vote. As allowed by law the hearings will be informal in nature. A quorum of the Commission shall be necessary to conduct a hearing. Due to the informal nature of the hearing, and where necessary, a Commission member may participate at the hearing through the telephone. Pursuant to the law, the quorum must consist of at least 5 members provided that there is at least one representative from each Senatorial district. It is not necessary that the hearing be "noticed publicly," but the challenged registrant shall be given reasonable advance notice and opportunity to be heard at the hearing.

The challenged registrant shall be allowed to offer any oral or documentary evidence as to why he should be registered to vote. The challenged registrant may be represented by counsel of his own choosing and at his own expense. Any person shall be allowed to offer any oral or documentary evidence as to why the person should or should not be registered to vote. The challenged registrant may also participate at the hearing by being physically present or through the telephone.

The decision denying the challenged registrant the right to be registered to vote shall be decided by a 3/4 majority of the Commission members present at the hearing, including those participating through the telephone. In all other cases where less than 3/4 of the Commission members present vote to deny the registrant the right to be registered to vote, then it shall be presumed that the registrant is qualified to register to vote. No Commission member who does not participate by being present (either physically or through the telephone) in a challenge hearing shall be allowed to vote on whether or not the registrant can register to vote. The

Commission shall announce its decision in writing to the challenged registrant as well as make it available to the public no later than three [3] days after the conclusion of the hearing.

The decision of the Commission shall be final, however the Judicial Review petition procedures of the Commonwealth Administrative Procedures Act shall also govern the Commission's decision, as being an agency action.

Section 4 Polling Places

Section 4.1 Locations. The Commission shall choose Polling Places for each election no less than 60 days prior to the date of the election. Public schools and public buildings, whenever possible, shall be utilized as polling places during elections and the Commission shall insure that polling places are located in prominent locations or central portions of precincts or in the heaviest most populated areas of the precinct to make the polling locations as easily accessible to all voters.

Section 4.2 Accessibility. All polling places must be accessible to voters with disabilities, and no polling place shall be chosen that is unable to accommodate a voter with a disability.

Section 4.3 Announcement. The polling place locations shall be published in the newspapers of general circulation in the Commonwealth at least 15 days prior to the election. In addition the Commission shall make available to any voter who so requests the list of polling places for each precinct.

Section 4.4 Further Publication. Nothing in this section shall limit the Commission in announcing the polling locations through other additional mediums such as television, the Internet, or official posting boards within government offices. The commission should strive for maximum notification of the polling place locations.

Section 5 Voting Procedures

Section 5.1 Voting Ballot. The Commonwealth of the Northern Mariana Islands currently uses the paper ballot method of voting. Prior to the election the Commission shall print a ballot for each voting precinct on paper which shall list all candidates who have met the requirements to be listed on the ballot. In addition to the names of the candidates, the candidates political party affiliation, if any, shall be listed on the ballot as well as the office that each candidate seeks. In the case of offices such as Municipal Council

and Board of Education, or Independently nominated candidates for any office no political party affiliation shall be listed, as those offices or candidates are by their very nature considered non-partisan. No independently nominated candidate who previously had a political affiliation may use that affiliation unless he is nominated for that office by that political party.

All candidate names shall be printed with a sufficient font size for all voters to read, but no candidate shall have a different font size than any other candidate. The ballot shall be organized in a columnar format for each political party or independent nomination of candidacy that is listed at the top of the ballot above the names of the nominated candidate for each office. The columns shall as nearly as possible be equal in size except where a candidate's name requires additional space then that column will provide that additional space to accommodate the name of the candidate.

Section 5.2 Design and Non-Contestability of Ballot. The staff of the Commission shall have the primary responsibility for the design of the ballot. The Election Commission shall have final approval over the design of the ballot. After the Election Commission publishes the ballot a specimen copy of the ballot shall be made available in Saipan, Tinian and Rota for public viewing upon reasonable request. The design of the ballot as approved by the Election Commission shall be final and non-contestable in any Commonwealth Court or United States Court.

Prior to the final publication of the ballot the candidate locations and columns for the political parties on the ballot for the various offices shall be designated by a number corresponding to their location. On a date designated by the commission staff a representative of the political parties and the candidates (or their representatives) will select random numbers (corresponding to those ballot location numbers) out of a paper bag or hat in such a manner that the person choosing the number has no way of knowing which number they are choosing. The executive director shall conduct these drawings. The first drawing will be for the political parties columnar position on the ballot. The second drawing will be for the individual candidate locations on the ballot where there is multiple (at least two) candidates from one political party for an individual office. The number chosen by each of the parties and the candidates (or their representatives) shall then correspond to those pre-designated number locations on the ballot. Any person can act as a representative of more than one candidate, for instance the Chairman of a new or recognized political party may act as the representative for all of their party's candidates.

Section 5.3 Number of Ballots. The Commission shall insure that enough ballots are to be printed in excess of the number of registered voters within the Commonwealth. Each polling place shall have a sufficient supply of ballots, in case a voter damages or incorrectly marks his ballot. A voter shall receive another ballot upon surrender of the damaged or incorrectly marked ballot to the Precinct Official. Voters who spoil or damage a ballot are entitled to receive a replacement but not to exceed more than a maximum of three [3] total.

Section 5.4 Ballot Instructions. Each polling place shall have instructions for the voters on how to properly mark their ballot. The instructions shall state the voter is to mark the box next to the name of the candidate of their choice with either an "X" or a "✓" If applicable, the instructions shall also state the voter may choose only as many candidates for the number of offices available in each precinct.

Section 5.5 Ballot Marks. Only an "X" or a "✓" are allowed on the ballot. The following markings are not proper and will result in the voter's vote for that particular office not being counted:

1. Circling the candidate's name.
2. Circling the square next to the candidate's name.
3. Writing the word yes next to the candidate's name.
4. Writing the word yes in the box next to the candidate's name.
5. Drawing a line from the candidate's name to the box.
6. Drawing a " → " from the candidate's name to the box.
7. Placing a " ● " in the box.
8. Puncturing a hole in the box.
9. Underlining the candidate's name.
10. Any other marking on the ballot by the voter other than an "X" or a "✓".

Section 5.6 Initiatives and Referendums. Any election that has a duly qualified initiative or referendum placed on the ballot shall clearly state the exact wording of the question, proposition or initiative that was certified on the ballot. Below the wording of the question, initiative or referendum shall be the words Yes and No, as well as corresponding boxes to those responses. Any voter who desires to vote on a particular question, initiative or referendum shall mark the box of their choice using the same methods that are allowed for voting for candidates. Any voter who makes a mark that was prohibited in Section 5.5 shall not have their vote counted for that particular issue.

- Section 5.7 Absentee Voting. Nothing in the section regarding voting procedures shall prevent an eligible voter to vote by absentee ballot if they qualify for such a ballot as provided for by law. The same rules and requirements for marking the "polling place" or "election day" ballot shall be applicable to absentee ballots.
- Section 5.8 Ballot Language. The ballot and any accompanying instructions shall be printed in the English language.
- Section 5.9 Voter Assistance. If a voter at a polling place states that they cannot read or write, then they shall state such to the polling place supervisors who shall render such assistance to the voter as necessary so that the voter will be able to vote. If the voter has any other disability which shall prevent him from voting, then the polling place supervisors shall render such voter assistance in order to insure that each voter who desires to vote shall be able to. In no other instance shall a person ask another person at a polling place as to which candidate he intends to vote for or which candidate he voted for.
- Section 5.10 Polling Place Privacy. Except as allowed for and is necessary to carry out the mandate of Section 5.9, the polling place booth where the voter marks their ballot shall remain private. No person may enter such booth at any time a voter is inside the booth in the process of voting.
- Section 5.11 Ballot Privacy. Upon completing their selections on the ballot, the voter shall fold the ballot in such a way that their choices remain private, and shall promptly deposit their ballot into the ballot box. If the commission provides the voter with a secrecy sleeve as part of the Commonwealth ballot, then the voter shall place their ballot in the secrecy sleeve prior to exiting the voting booth, instead of folding the ballot.
- Section 5.12 Proof of Voting. The polling place supervisors shall cross off the name of each voter on their list after that voter has received their ballot. In addition each voter shall be required to have their right index finger marked with an ink pen capable of making an indelible mark to show that the voter has indeed already voted. If a voter does not have a right index finger then any other finger will be acceptable.
- Section 5.13 Write-In Votes. A write-in vote shall not be allowed. The only votes allowed are for candidates who have qualified for the ballot as provided for by law. Nor shall a voter write in a name of a candidate whose name has already been printed on the ballot and has a box next to their name. Any write-in votes will not be counted for any candidate that should

receive such votes, and will automatically disqualify any valid votes on that ballot for that particular office.

Section 5.14 Voter Challenges. Each qualified voter whose name appears on the register has a right to vote and shall not be denied a ballot. Any person who wishes to challenge a registered and eligible voter's residency or qualification to vote during an election may seek such relief in the Superior Court of the Commonwealth. The Commission shall not hear any challenges to a registered or eligible voter at any time. If the challenge to a voter is such that a person complains that the challenged voter[s] vote changed the outcome of the election, then the complaint must also satisfy the procedural and substantive requirements of an election contest pursuant to law. Nothing in this section shall prevent the Commission from conducting hearings on voter registration affidavits, pursuant to Section 3.9 of these regulations.

Section 5.15 Polling Place Observers. Any candidate, political party or proponent or opponent of an issue or referendum may have no more than two "polling place observers" inside a polling place to observe the election. The observers shall be allowed to be present at any time the polling place is open. The observers may not wear any buttons, t-shirts or other identifying items that reveal the candidate or issue they support. Any observer who attempts to campaign on their candidate or issue's behalf shall be removed by the polling place supervisor and will not be allowed to return to that polling place. Campaigning is defined as:

1. Making oral statements to voters to vote for a candidate or support an issue, initiative or referendum.
2. Making oral statements to voters to support a candidate, issue, initiative or referendum.
3. Wearing, displaying or handing out any materials that reflect which candidate, issue, initiative or referendum they are supporting.

The observers are not in anyway to disrupt the voting process in any polling place. Observers may not be a candidate for any office that is appearing on the ballot. Any such observer will be asked to leave the polling place area immediately by the polling place supervisor.

- Section 5.16 Voter Behavior within 100 feet of Polling Place. No voter or other person shall engage in any activity that is prohibited pursuant to Section 5.15 of these regulations. Commonwealth law provides that campaign activity ceases on election day from 7:00 a.m.-7:00 p.m. within 100 feet of a polling place. Any voter who engages in such proscribed activity within 100 feet of a polling place which interrupts and interferes with the orderly procedure at the polling place can be removed from the polling place.
- Section 5.17 Use of Police Officers. If available, the Commission may use the services of the Department of Public Safety sworn Police Officers to maintain order and security at polling place locations, and to safely and securely transport the ballots for tabulation and counting.
- Section 5.18 Removal of Ballots from Polling Places. Unless otherwise authorized by the Commission, no person may remove any ballot from any polling place at any time while the polls are still open.
- Section 5.19 Accounting for Ballots. Poll supervisors shall account for the ballots delivered to them by returning a sufficient number of unused ballots to make up when added to the number of official ballots cast and the number of spoiled ballots returned, the number of ballots charged. The Commission upon receiving returned ballots shall require such an accounting.
- Section 5.20 Unused Ballots. When the polls close the election officials shall deface all unused ballots. This will occur before the marked ballot[s] leave the polling place. Three[3] authorized polling place workers shall witness the defacing of the ballots. The poll workers will deface the ballots by drawing an "X" on the face of the ballot. All defaced ballots (including spoiled or damaged ballots) will be placed into a sealed envelope. The majority of the election officials of a polling place shall sign their names on the envelope. The envelope shall indicate the polling place. The locked ballot boxes and all other election materials shall be delivered to the Commission for counting and tabulation.

Section 6 Procedures for Complaints of Election Irregularities

- Section 6.1 Receipt of Complaint. Upon the receipt of a complaint either in writing or made orally, the Executive Director or Chairman of the Commission shall immediately review the substance of the complaint, to determine the nature of alleged "Election Irregularity."
- Section 6.2 Consultation with Attorney General's Office. The Director shall

immediately consult with the Attorney General or any Assistant Attorney General to determine how the complaint of election irregularity shall be investigated. Upon recommendation and advice, the director shall then seek the assistance of the Attorney General's Investigative Unit or the Department of Public Safety where the allegation appears to be the violation of a law.

Section 6.3 Referral to the Public Auditor. Where the allegation of "election irregularity" appears to be a violation of the "Government Ethics Code" 1 CMC § 8501 et. seq. then the Director shall refer the matter to the Public Auditor for investigation.

Section 6.4 Confidentiality. All complaints of election irregularity and violation of laws are to remain strictly confidential. The Executive Director, Commission staff person, or the Commission itself must not reveal the identity of the person making the complaint to any outside person. The subject matter or nature of the complaint is also to remain confidential. Where appropriate the results of the investigation may be released if approved by the Attorney General's Office.

Section 6.5 Time is of the Essence. All such election irregularity complaints shall be treated as extremely time sensitive. The Executive Director or Commission must take the steps as outlined in this section immediately in order to properly investigate and prevent irregularities. This is regardless if the complaint is made before or after an election has taken place.

Section 6.6 Outcome of Election. Any complaint made to the Commission, the Department of Public Safety, the Attorney General's Office or the Public Auditor shall not satisfy the requirement of filing an election contest as provided by law. Any complaint of election irregularity that seeks to change the outcome of the election must be properly filed with the Superior Court and comply with the election contest provisions of the Election Law.

Section 7 Tabulation, Poll and Election Officials

Section 7.1 Appointments. The Commission is authorized to appoint and employ such officials as may be required to supervise Commonwealth elections. The Commission shall not employ or appoint a person who is a candidate for public office or who holds an elected position, or who is a convicted felon still on parole. Any person who is appointed shall take and subscribe to an oath of office, a copy of which is attached to these regulations as Exh. "B."

Section 8 Campaign Finance Disclosure

Section 8.1 Campaign Committee Designations. Pursuant to 1 CMC §6424 all candidates who are officially nominated are required to file Campaign Finance and Spending disclosure statements with the Office of the Public Auditor. In past elections there have been numerous occurrences of Candidates failing to file these forms. Consequently the Office of Public Auditor frequently contacts the Commission staff for contact information on the candidates who fail to file their forms on time. Therefore it shall be required for all candidates upon their submission of nomination papers to also submit a Campaign Committee statement that identifies a Chairman, Secretary and Treasurer of their committee. The form shall also provide postal addresses and telephone numbers for each of these people. Upon request of the Office of Public Auditor, and for purposes of enforcing this provision the Commission shall provide contact information to the Office of Public Auditor upon reasonable request.

Section 9 Severability. If any provision of these regulations shall be held invalid by a court of competent jurisdiction. The validity of the remainder of the regulations shall not be affected thereby.

Section 10 Effective Date. These regulations shall take effect upon the Notice of Adoption and upon final publication in the Commonwealth Register.

EXHIBIT “A”

-15-



**ELECTION COMMISSION
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
AFFIDAVIT OF REGISTRATION**

Social Security No. _____	Affidavit No. _____	ED No. _____	Code N R T C
Full legal Name _____			
Last	First	Middle	
Mailing Address _____			
Residence (Village) _____	Island _____	Since _____	
Date of Birth _____	Place of Birth _____	Gender _____	
I last registered under _____			
Last Name	First	Middle	

I am a United States citizen or national as defined in the NMI Constitution.
I am not registered to vote in any other jurisdiction.
The residence, and the time since that residence was established, stated herein was acquired with the intent to make the Northern Mariana Islands my legal residence with all the accompanying obligations therein.
I am not presently serving a criminal sentence for a felony conviction.
I am not confined to a mental institution nor have I been declared insane by the courts.
I meet the eligibility to vote requirements of the NMI Constitution and the election laws of the CNMI.

OATH

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on _____ at _____

Signature of Registrant

SUBSCRIBED AND SWORN TO BEFORE ME ON _____, 20____

Signature of Person Administering Oath

- Election Official
- Notary Public
- Commission Officer Authorized to Take Oath

1 CMC §8504: A person who signs an affidavit of registration knowing that he does not qualify to vote or who knowingly registers with intent to vote more than once or who registers in an election district in which he does not reside shall upon conviction be fined not more than \$3,000 or imprisoned for not more than one year.

6 CMC §8306: Every person who takes an oath or any legal substitute for an oath before a competent tribunal, officer, or person, in any case in which a law of the Commonwealth authorizes an oath, or any legal substitute for it to be administered, that he or she will testify, declare, depose, or certify truly; or that any written testimony, deposition, or certificate by the witness subscribed is true, and who willfully and contrary to such oath or legal substitute states or subscribes any material which he or she does not believe to be true, is guilty of perjury, and upon conviction thereof, shall be fined up to \$5,000 and imprisoned up to five years.

EXHIBIT "B"

-16-



**BOARD OF ELECTIONS
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

P.O. Box 500470
Saipan, MP 96950-0470

Tel.: (670) 664-VOTE
Fax: (670) 664-8689

OATH OF OFFICE

I do solemnly swear that I am registered to vote in election district no. _____,
Commonwealth of the Northern Mariana Islands, that I am not holding an elective office nor am I
a nominee or candidate for any such office, that I will support the Covenant to Establish a
Commonwealth of the Northern Mariana Islands in Political Union with the United States of
America, those provisions of the Constitution, treaties and laws of the United States applicable
to the Northern Mariana Islands, the Constitution and laws of the Northern Mariana Islands, the
rules and regulations governing elections in the Northern Mariana Islands, and that I will
faithfully discharge the duties of the office of election official to the best of my ability.

Date

Signature

Social Security Number

Print Name

Mailing Address

Commonwealth of the Northern Mariana Islands,)

) ss.

_____ Saipan, Mariana Islands.)

Subscribed and sworn to before me this _____ day of _____, 2001.

Commonwealth Election Commission



Commonwealth of the Northern Mariana Islands

Division of Environmental Quality

P.O. Box 1304, Saipan, MP 96950



Tels.: (670) 664-8500/8501
Fax : (670) 664-8540

PUBLIC NOTICE

EMERGENCY ADOPTION OF COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS HARMFUL SUBSTANCE CLEAN UP REGULATIONS AND INTENT TO ADOPT PERMANENT REGULATIONS

AUTHORITY: The Director of the Division of Environmental Quality (DEQ), Office of the Governor, Commonwealth of the Northern Mariana Islands (CNMI), pursuant to the authority of the CNMI Environmental Protection Act, P.L. 3-23, 2 CMC §§ 3101 *et seq.* (as amended by Public Law 11-103), 1 CMC §§ 2646 to 2649 and Public Law 11-108, adopts and promulgates emergency Harmful Substance Clean Up Regulations.

CONTENTS: These regulations are intended to protect the health of the citizens of the CNMI and the CNMI environment by establishing a process to accomplish clean ups when harmful substances have been released or are being released into the environment. The regulations apply to 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. The regulations establish administrative processes and standards to identify, investigate, and require the clean up of facilities and sites where harmful substances have come to be located. The regulations also contain provisions governing public participation, monitoring of clean up sites, and emergency or interim actions.

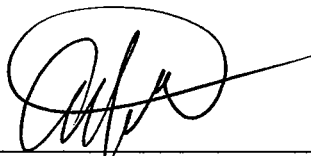
EMERGENCY: DEQ finds, pursuant to 1 CMC § 9104(b), that the public interest, health, safety and welfare require the adoption of these regulations as emergency regulations for the reasons stated below. These regulations shall become effective immediately upon filing with the Registrar of Corporations in accordance with 1 CMC § 9105(b)(2) and shall remain effective for 120 days.

REASON FOR THE EMERGENCY: Sites currently exist in the CNMI where harmful substances have been released into the environment and threaten public health and safety and the quality of the environment. Based on current documentation, some of the substances released into the environment may cause cancer and other harmful health effects, including behavioral disruption affecting fertility, learning ability, and aggression. The likelihood of the presence of additional harmful substances is based on the knowledge of past and present activities on such sites. DEQ's ability to address such sites has been limited by the lack of enforceable standards promulgated by the Commonwealth. These regulations provide enforceable standards and will allow DEQ to require actions at sites to protect the environment and public health. The public interest therefore requires, consistent with 1 CMC § 9104(b), that these regulations be adopted upon fewer than 30 days notice and that they be immediately effective.

INTENT TO ADOPT: The Director intends to adopt these regulations as permanent regulations pursuant to 1 CMC § 9104(a), and therefore notifies the public of the opportunity to submit comments. Copies of the emergency regulations are available at the office of the Division of Environmental Quality, located on the third floor of the Morgen Building in San Jose, Saipan, MP 96950. Written comments on the Harmful Substance Clean Up Regulations may be submitted to: Director, Division of Environmental Quality, P.O. Box 1304, Saipan, MP 96950. Comments must be received by DEQ within thirty (30) days of the date the emergency regulations are published in the Commonwealth Register.

Issued by:

Date: 03/01/01



Antonio I. Deleon Guerrero, Acting Director
Division of Environmental Quality

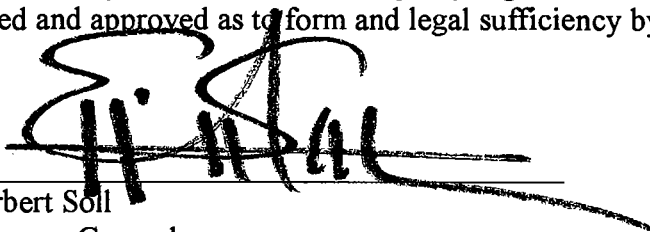
Concurred by:

Date: 03/01/01


~~Pedro P. Tanco~~
Acting Governor

Pursuant to 1 CMC § 2153, as amended by P.L. 10-50, the emergency regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the Office of the Attorney General.


Date: 3/1/01



Herbert Soll
Attorney General

Filed By:

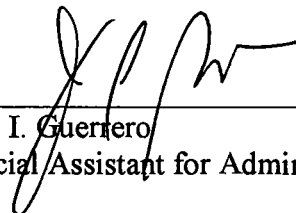
Date: 3/1/01



Soledad B. Sasamoto
Registrar of Corporations

Received at the Governor's Office by:

Date: 03/1/01



Jose I. Guerrero
Special Assistant for Administration



Commonwealth of the Northern Mariana Islands

Division of Environmental Quality

P.O. Box 1304, Saipan, MP 96950



Tels.: (670) 664-8500/8501
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CERTIFICATION

I, Antonio I. Deleon Guerrero, Acting Director of the Division of Environmental Quality, certify that the foregoing Commonwealth of the Northern Mariana Islands Harmful Substance Clean Up Regulations are a true, complete and correct copy of the regulations regarding harmful substances formally adopted by the Division of Environmental Quality. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 01 day of March, 2001, Saipan, Commonwealth of the Northern Mariana Islands.

Antonio I. Deleon Guerrero, Acting Director
Division of Environmental Quality

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
HARMFUL SUBSTANCE CLEAN UP REGULATIONS**

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PART I — OVERALL CLEAN UP PROCESS

Section 100 - Purpose.

This regulation is promulgated under the Commonwealth Environmental Protection Act. It establishes administrative processes and standards to identify, investigate, and clean up facilities where harmful substances have come to be located. It defines the role of the division and encourages public involvement in decision making at these facilities.

The goal of this regulation is to implement the policy declared by the Section 3111 of the Commonwealth Environmental Protection Act. This regulation provides a workable process to accomplish effective and expeditious clean ups in a manner that protects human health and the environment. This regulation 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.

Section 110 - Applicability.

(1) This regulation 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 regulation, 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.

(2) 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 regulation and under other laws may be combined. The division may initiate a remedial action under this regulation and may, upon further analysis, determine that another law is more appropriate, or vice versa.

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

PART II — DEFINITIONS AND USAGE

Section 200 - Definitions.

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

200.01 "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.

200.02 "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.

200.03 "Applicable Commonwealth and federal laws" means all legally applicable requirements and those requirements that the division determines, based on the criteria in Section 710(3), are relevant and appropriate requirements.

200.04 "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.

200.05 "Carcinogen" means any substance or agent that produces or tends to produce cancer in humans. For implementation of this regulation, 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 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.

200.06 "Commonwealth" means the Commonwealth of the Northern Mariana Islands.

200.07 "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.

200.08 "Contaminant" means any harmful substance that does not occur naturally or occurs at greater than natural background levels.

200.09 "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.

200.10 "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.

200.11 "Direct contact" means exposure to harmful substances through ingestion, inhalation, or dermal contact.

200.12 "Director" means the director of the division or the director's designee.

200.13 "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.

200.14 "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.

200.15 "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.

200.16 "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.

200.17 "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.

200.18 "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.

200.19 "Ground water" means water in a saturated zone or stratum beneath the surface of land or below a surface water.

200.20 "Hazard index" means the sum of two (2) or more hazard quotients for multiple harmful substances and/or multiple exposure pathways.

200.21 "Harmful substance" means any hazardous substance under section 101(14) of the federal clean up law, 42 U.S.C., Sec. 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.

200.22 "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.

200.23 "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.

200.24 "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.

200.25 "Indicator harmful substances" means the subset of harmful substances present at a site selected under Section 708 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.

200.26 "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.

200.27 "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.

200.28 "Mail" means delivery through the United States Postal Service or an equivalent method of delivery or transmittal, including private mail carriers, or personal delivery.

200.29 "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.).

200.30 "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.

200.31 "Natural background" means the concentration of a harmful substance consistently present in the environment which has not been influenced by localized human activities.

200.32 "Natural person" means any unincorporated individual or group of individuals. The term "individual" is synonymous with "natural person."

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

200.34 "Permanent solution" means a clean up action in which clean up standards of Part VII 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.

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

200.36 "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 that 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 and has not been deemed to have contributed to a release of a harmful substance(s) in accordance with these regulations.

200.37 "Practicable" means (except when used in the phrase "permanent to the maximum extent practicable" which is defined in Section 360(5)) 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.

200.38 "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.

200.39 "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.

200.40 "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.

200.41 "Relevant and appropriate requirements" means those clean up standards established under Commonwealth and federal law that, while not legally applicable to the clean up action, the division determines address problems similar to those encountered at the site. The criteria specified in Section 710(3) shall be used to determine if a requirement is relevant and appropriate.

200.42 "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.

200.43 "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.

200.44 "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.

200.45 "Saturated zone" means the area below the water table in which all interstices are filled with water.

200.46 "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.

200.47 "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.

200.48 "Site" means the same as facility.

200.49 "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.

200.50 "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.

200.51 "Technically possible" means capable of being designed, constructed and implemented in a reliable and effective manner, regardless of cost.

200.52 "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.

200.53 "Underground storage tank" or "UST" means an underground storage tank and connected underground piping as defined in the rules adopted under the Act.

200.54 "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.

200.55 "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 (1) additional cancer above the background cancer rate per one hundred thousand (100,000) individuals.

200.56 "Upper bound on the estimated excess cancer risk of one (1) in one million" means the upper 95th percent confidence limit on the estimated risk of one (1) additional cancer above the background cancer rate per one million individuals.

200.57 "Wastewater facility" means all structures and equipment required to collect, transport, treat, reclaim, or dispose of domestic, industrial, or combined domestic/industrial wastewater.

Section 210 - Usage.

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

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

(2) The terms "applicable," "appropriate," "relevant," "unless otherwise directed by the division" and similar terms implying discretion mean as determined by the division.

(3) "Conduct" means to perform or undertake whether directly or through an agent or contractor, unless this regulation expressly provides otherwise.

(4) "Include" means included but not limited to.

(5) "May" means the provision is optional and permissive, and does not impose a requirement.

(6) "Shall" means the provision is mandatory.

(7) "Threat" means threat or potential threat.

(8) "Under" means pursuant to, subject to, required by, established by, in accordance with, and similar expressions of legislative or administrative authorization or direction.

PART III — SITE REPORTS AND CLEAN UP DECISION

Section 300 - Site discovery and reporting.

(1) **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 regulation. The division may take any other actions it deems appropriate to identify potential harmful substance sites.

(2) **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 (1) 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.

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

- (a) Application of pesticides and fertilizers for their intended purposes and according to label instructions;
- (b) Lawful and nonnegligent use of harmful substances by a natural person for personal or domestic purposes;
- (c) A release in accordance with a permit that authorizes the release;
- (d) A release previously reported to the division in fulfillment of a reporting requirement in this regulation or in another law or regulation;
- (e) 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 regulation;
- (f) A release to the air;
- (g) A release to a permitted wastewater facility; or
- (h) A release reported under the UST rules adopted pursuant to the Act.

An exemption from these notification requirements does not imply a release from liability in future actions by the division.

(4) **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.

Section 310 - Initial investigation.

(1) 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 regulation.

(a) 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 (90) days.

(b) 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.

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

(3) 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.

(4) Division decision. Based on the information obtained about the site, the division shall within thirty (30) days of completion of the initial investigation make one (1) or more of the following decisions:

(a) A site hazard assessment is required;

(b) Emergency remedial action is required;

(c) Interim action is required; or

(d) The site requires no further action under this regulation 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.

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.

Section 320 - Site hazard assessment.

(1) **Purpose.** The purpose of the site hazard assessment is to provide sufficient sampling data and other information to:

- (a) Confirm or rule out that a release or threatened release of a harmful substance has occurred;
- (b) To identify the harmful substance and provide some information regarding the extent and concentration of the substance;
- (c) Identify site characteristics that could result in the harmful substance entering and moving through the environment; and
- (d) Evaluate the potential for the threat to human health and the environment.

(2) **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.

(3) **Administrative options.** The site hazard assessment may be conducted under any of the procedures described in Section 510.

(4) **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 (1) of this section. To fulfill this requirement, a site hazard assessment shall include, as appropriate, the following information:

(a) Identification of harmful substances, including what was released and is threatened to be released and/or, if known, what products of decomposition, recombination, or chemical reaction are currently present on site, and an estimate of their quantities and concentrations;

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

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

(d) 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;

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

(f) 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;

(g) 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;

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

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

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

Section 350 - Commonwealth remedial investigation and feasibility study.

(1) **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 Section 360.

(2) **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 Section 360, except for an emergency or interim action.

(3) **Administrative options.** A Commonwealth remedial investigation/feasibility study may be conducted under any of the procedures described in Section 510.

(4) **Public participation** will be accomplished in a manner consistent with Section 600.

(5) **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 Section 360. In addition, for facilities on the federal national priorities list, the Commonwealth remedial investigation/feasibility study shall comply with federal requirements, at a minimum.

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

(a) **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.

(b) **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.

(c) **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.

(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.

(d) **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 and allow an adequate margin of safety for protection of human health and the environment.

(e) **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 Section 360.

(f) **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 regulation.

(g) **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.

(h) **Other information as required by the division.**

(7) **In appropriate cases the division may allow departure from the requirements of subsection (6) of this section and will allow information to be incorporated by reference to avoid unnecessary duplication.**

(8) **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. 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.

Section 360 - Selection of clean up actions.

(1) Purpose.

(a) **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 Sections 700 through 760 and the administrative principles for the overall clean up process.

(b) 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.

(2) **Threshold requirements.**

All clean up actions conducted under this regulation shall protect human health and the environment; shall comply with clean up standards (see Section 700 through 760); shall comply with applicable Commonwealth and federal laws (see Section 710); and shall provide for compliance monitoring (see Section 410).

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

(a) Use permanent solutions to the maximum extent practicable (see Sections 360 (4), (5), (7), and (8));

(b) Provide for a reasonable restoration time frame (see Section 360(6));
and

(c) Consider public concerns raised during public comment on the draft clean up action plan (see Sections 360 (10) and (11)).

(4) **Clean up technologies.**

(a) 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;

(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.

(b) A combination of technologies from more than one (1) of the categories under (a) 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.

(5) Permanent solutions.

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

(b) 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 (4)(a)(i) through (iii) of this section.

(c) 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 Sections 700 through 760. 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.

(d) 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 (2) 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.**

(e) To ensure a bias toward permanent solutions, clean up actions conducted under this regulation 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

(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.

(6) Restoration time frame.

(a) 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.

(b) 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.

(c) Where clean up levels determined under method C in Section 707 are below technically possible concentrations, concentrations that are technically possible to achieve shall be met within a reasonable time frame considering the factors in (a) of this subsection. In these cases the remedial action shall be considered an interim action until clean up levels are attained.

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

(7) 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.

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

(a) 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;

(b) The division expects that when harmful substances remain on-site at concentrations which exceed clean up levels, those harmful substances will be consolidated to the maximum extent practicable where needed to minimize the potential for direct contact and migration of harmful substances;

(c) 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

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

(e) 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.

(9) 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.

(a) 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.

(b) The clean up plan shall not be implemented until approved by the division.

(10) Public participation. The division shall provide public notice and opportunity for comment on the draft clean up plan as described in Section 600.

(11) 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:

(a) The clean up action meets the requirements in subsections (2) and (3) of this section;

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

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

PART IV — SITE CLEAN UP AND MONITORING

Section 400 - Clean up actions.

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

(1) 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:

- (a) The clean up action plan;**
- (b) Accepted engineering practices; and**
- (c) The requirements of Sections 360 (1) and (2).**

(2) Administrative options. A clean up action may be conducted under any of the procedures described in Section 510.

(3) Public participation. During clean up action implementation, public participation shall be accomplished in a manner consistent with the requirements of Section 600.

(4) 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 (1) 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.

(a) 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.

(b) 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.

(c) **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.

(5) In appropriate cases the division may authorize departure from the requirements of subsection (4) of this section, and may allow information to be incorporated by reference to avoid unnecessary duplication.

(6) **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.

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

(a) **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.

(b) **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.

(c) **Plan modifications.** Changes in the design or construction of the clean up action shall be approved by the division.

(8) **Plans or reports prepared under this section shall be submitted to the division for review and approval.**

(9) **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.

Section 410 - Compliance monitoring requirements.

(1) **Purpose.** The purposes of compliance monitoring and evaluation of the data are to:

(a) **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;

(b) **Performance monitoring.** Confirm that the interim action or clean up action has attained clean up standards and, if appropriate, other performance standards;

(c) **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.

(2) **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 regulation. Compliance monitoring may be required for all environmental media including air, ground water, surface water, soil, and sediment.

(3) **Compliance monitoring plans.** A compliance monitoring plan shall be prepared 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 Sections 400 and 820. Compliance monitoring plans shall be specific for the media being tested.

(4) **Administrative options.** Except as provided in Section 530, interim clean up actions may be conducted under any of the procedures described in Section 510.

420 - Periodic review.

(1) 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 Section 700 through 760, or if conditional points of compliance have been established, the division may review the clean up action after the initiation of such clean up action to assure that human health and the environment are being protected.

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

- (a) The effectiveness of ongoing or completed clean up actions;
- (b) New scientific information for individual harmful substances or mixtures present at the site;
- (c) New applicable Commonwealth and federal laws for harmful substances present at the site;
- (d) Current and projected site uses; and
- (e) The availability and practicability of new remediation technologies.

(3) 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.

430 - Interim actions.

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

- (a) An action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one (1) or more pathways for exposure to a harmful substance at a facility; or
- (b) An action that corrects a problem that may become substantially worse or cost substantially more to address if the action is delayed; or

(c) An action needed to provide for completion of a site hazard assessment, Commonwealth remedial investigation/feasibility study or design of a clean up action.

(2) General requirements.

(a) 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.**

(b) 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.**

(3) Timing.

(a) 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.

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

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

(4) Administrative options. Except as provided in Section 530, interim clean up actions may be conducted under any of the procedures described in Section 510.

(5) Public participation will be accomplished in a manner consistent with Section 600.

(6) 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:

- (a) A description of the interim action and how it will meet the criteria identified in subsections (1) and (2) of this section;
- (b) Information from the applicable subsections of the remedial investigation/feasibility study of Section 350, 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;
- (c) Information from the applicable subsections of the design and construction requirements of Section 400;
- (d) A compliance monitoring plan meeting the applicable requirements of Section 410;
- (e) A safety and health plan meeting the requirements of Section 810; and
- (f) A sampling and analysis plan meeting the requirements of Section 820.

(7) **Construction.** Construction of the interim action shall be in conformance with Section 400(7).

Section 440 - Institutional controls.

(1) **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 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:

- (a) 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 VII; or
- (b) If conditional points of compliance have been established; or
- (c) 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.

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

(3) Institutional controls include:

(a) 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

(b) 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.

(4) Format.

(a) 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.

(b) 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.

(5) 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.

(6) 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 Sections 700 through 760 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.

Section 445 - Evacuation.

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

(2) **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:

- (a) Apparent hazards or health risks;
- (b) The exposure assessment conducted as part of any site hazard assessment under Section 320; or
- (c) The risk assessment conducted as part of any remedial investigation and feasibility study under Section 350;

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.

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

(4) **Public participation** will be accomplished in a manner consistent with Section 600; however, as evacuation is generally time critical, the division, in its discretion, may limit public participation as necessary.

(5) **Administrative options.** Evacuation may be conducted under any of the procedures described in Section 510.

Section 450 - 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.

(1) A clean up action may be considered routine if, in its discretion, the division determines that the following criteria are met:

(a) It uses a clean up method that is reliable and has proven capable of accomplishing clean up standards;

(b) 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

(c) The division has experience with similar actions.

(2) Clean up of ground water will not normally be considered a routine clean up action.

(3) A routine clean up action may be conducted under any of the procedures described in Section 510.

PART V — ADMINISTRATIVE PROCEDURES FOR REMEDIAL ACTIONS

Section 500 - Determination of status as a potentially liable person.

(1) 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.

(2) Contents of letter. The status letter may provide:

- (a) The name of the person the division believes to be potentially liable;**
- (b) A general description of the location of the facility;**
- (c) The basis for the division's belief that the person has a relationship to the facility;**
- (d) 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;**
- (e) An indication of the division's intentions regarding enforcement or other actions at the facility; and**
- (f) The names of other persons to whom the division has sent a status letter.**

(3) 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 (15) days from the date of receipt by the potentially liable person of the status letter unless the division provides an extension.

(4) 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.

(5) 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.

(6) 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.

Section 510 - Administrative options for remedial actions.

(1) **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 (2) and (3) of this section.

(2) **Action initiated by the potentially liable person.** Potentially liable persons may initiate a remedial action, as follows:

(a) A person may initiate negotiations for a consent decree by submitting a letter under Section 520(1).

(b) A person may request an agreed order by submitting a letter under Section 530.

(3) **Action initiated by the division.** The division may initiate a remedial action by:

(a) Issuing a letter inviting negotiations on a consent decree under Section 520(2); or

(b) Proceeding with an enforcement action under Section 540.

(4) **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.

Section 520 - Consent decrees.

(1) **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.

(a) **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 Section 600(8).

(b) The letter may include:

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

(ii) The contents of detailed proposal under (f) of this subsection.

(c) 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.

(d) The division may waive part of the letter requirements of (a) of this subsection if the requirements have already been met.

(e) Response. The division shall respond to the request within sixty (60) days, unless the division needs additional time to determine potentially liable person status under Section 500. 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.

(f) 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.

(g) 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 (60) days following receipt of their proposal a written notice indicating whether or not the proposal is sufficient to proceed with negotiations.

(h) 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 (e) of this subsection that their proposal was sufficient to proceed with negotiations. Negotiations may address one (1) or more phases of remedial action.

(i) 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 (120) 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.

The division may commence with enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

(2) 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.

(a) The letters may be delivered with potentially liable person status letters issued under Section 500. The period for negotiation shall not commence until the thirty (30) day comment period required by Section 500 has expired or the person expressly waives the procedural requirements of Section 500.

(b) Contents of letter. The letter shall:

(i) Inform potentially liable person(s) that the division with the presence and advice of the attorney general want 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 (90) days;

(iv) Reference the division's finding under Section 500;

(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.

(c) 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.

(d) 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 (a) of this subsection unless modified by the division. Negotiations may address one (1) or more phases of remedial action.

(e) Enforcement stay. Unless an emergency exists, the division will stay any enforcement action, but the duration of the stay shall not exceed ninety (90) 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.

The division may commence with enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

(f) Deadline extensions. The division may at its discretion extend the deadline for negotiations, provided the extension does not exceed thirty (30) days.

(3) Filing a decree. After satisfying public comment and hearing requirements, the division shall determine whether the proposed settlement negotiated under subsection (1) or (2) 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.

Section 530 - Agreed orders.

(1) 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.

(2) Request.

(a) 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 Section 600(8).

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

(c) 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.

(d) The division may waive part of the letter requirements of (a) of this subsection if the requirements have already been met.

(3) Response. The division shall respond to the request within sixty (60) days, unless the division needs additional time to determine potentially liable person status under Section 500. The division may:

- (a) Request additional information;**
- (b) Proceed with discussions, if the division believes it is in the public interest to do so; or**
- (c) Provide written reasons for denying the request.**

(4) Discussions on the agreed order shall not exceed sixty (60) 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 exceed sixty (60) days from the date discussions begin. Furthermore, the division can withdraw from discussions if it determines that:

- (a) Reasonable progress is not being made toward an agreed order acceptable to the division; or**
- (b) The agreed order is inappropriate based on new information or changed circumstances.**

The division may commence with enforcement action after notifying the potentially liable person in writing of its intent to withdraw from discussions.

(5) 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.

(6) When issuing an agreed order, the division shall provide appropriate public participation opportunities under Section 600. If the agreed order is for a routine clean up action and any person requests judicial review, then the applicable consent decree procedures under Section 520 will be initiated.

Section 540 - Enforcement orders.

(1) 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 regulation or by any consent decree, agreed order, or enforcement order issued pursuant to this regulation.

(2) Procedure.

(a) Concurrently or after issuing a notice of potentially liable person status letter under Section 500, the director may issue a potentially liable person a notice of violation and request for corrective action (NOV/RCA), if the requirements in this regulation 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.

(b) 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 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 (10) days from issuance of the ICO.

(B) The ICO will become a final compliance order (FCO) ten (10) 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 Section 540(2)(b)(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 (10) 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 (10) 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 reasonable 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 (30) 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 (30) days from the issuance of the final order.

(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.

(3) 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 these regulations and any consent decree, agreed order, or enforcement order issued pursuant to this regulation.

PART VI — PUBLIC PARTICIPATION

Section 600 - Public notice and participation.

(1) **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.

(2) 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.

(3) **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.

(a) **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.

(b) **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.

(c) **Newspaper publication.** Notice of the proposed action shall be published in the newspaper circulated in the area of the proposed action, by one (1) or more of the following methods: display ad; legal notice; or any other appropriate format, as determined by the division.

(d) **Comment periods.** All public notices shall indicate the public comment period on the proposed action. Unless stated otherwise, comment periods shall be thirty (30) days, at a minimum.

(e) **Combining public comment requirements.** Whenever reasonable, the division may consolidate public notice and opportunities for public comment under this chapter with public notice and comment requirements under other laws and regulations.

(4) **Public meetings.** During any comment period announced by a public notice issued under this chapter, if ten (10) 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.

(5) Additional methods. In addition to "public notice" describe in subsection 3 or this section, the division may use any of the following methods to provide information to the public:

- (a) Press releases;**
- (b) Fact sheets;**
- (c) Public meetings;**
- (d) Publications;**
- (e) Personal contact by division employees;**
- (f) Posting signs at the facility;**
- (g) Notice in the site register; and**
- (h) Any other methods as determined by the division.**

(6) Site register. The division shall maintain a site register. The site register shall be made available upon five (5) days notice.

(7) 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.

(8) Public participation plans.

(a) 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.

(b) 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.

(c) 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.

(d) 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 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.

(e) 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 (1) 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 (5) 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 chapter'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.

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

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

(a) A public participation plan which meets the requirements of subsection (8) of this section shall be developed when required.

(b) 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.

(c) 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 chapter, such as a clean up action plan, or notice under other laws. The notice shall briefly:

(i) Identify and generally describe the facility;

(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 (30) days from the date of the issuance of the notice.

(d) 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.

(10) Agreed orders. In addition to any other applicable public participation requirements, the following shall be required for agreed orders under Section 530.

(a) Public participation plan. A plan meeting the requirements of subsection (8) of this section shall be developed when required.

(b) 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.

(c) 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 (30) 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.
- (d) 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.

(11) Enforcement orders. In addition to any other applicable public participation requirements, the division shall provide public notice of all enforcement orders.

- (a) 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
 - (v) Invite the public to comment on the proposed order.
- (b) 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.

(12) 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.

- (a) 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.
- (b) Report. The division shall provide or require public notice of Commonwealth remedial investigation/feasibility study reports prepared under Section 350. 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 (30) days from the date of issuance of the public notice.

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

(a) 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;

(b) 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 (30) days from the date of issuance of the public notice.

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

(a) Public notice and opportunity to comment on any plans prepared under Section 400 that represent a substantial change from the clean up action plan.

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

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

(a) 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.

(b) 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 (30) days from the date of the issuance of public notice.**

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

PART VII — CLEAN UP STANDARDS

Section 700 - Overview of clean up standards.

(1) **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.

(2) **Clean up standards versus selection of clean up actions.**

(a) **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 Section 360. 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 applicable Commonwealth and federal laws and are generally established in conjunction with the selection of a specific clean up action.**

(b) **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, Section 350 (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 360 (Selection of clean up actions) specifies the criteria for selecting the preferred alternative. Section 410 specifies the monitoring required to assure that the remedy is effective.**

(c) **The division recognizes that clean up actions selected under Section 360 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 Section 360(7) are met.

(3) Three basic methods for establishing clean up levels. These rules provide three (3) approaches for establishing clean up levels:

(a) Method A: On some sites, the clean up action may be routine (Section 450) 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.

(b) 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 Sections 720 through 750. 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 noncarcinogenic 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 Sections 708. 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 noncarcinogenic toxic effects shall not exceed one (1).

(c) 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, 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 noncarcinogenic 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 Section 708. 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 noncarcinogenic toxic effects shall not exceed one (1).

(4) Additional requirements for setting clean up levels. Several requirements apply to clean ups under any of the three (3) 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.

(a) 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 Section 710 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.*

(b) Cross-media contamination. In some situations, migration of harmful substances from one (1) 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.

(c) Risk assessment procedures. The analyses performed under methods B and C use several factors for defining clean up levels for carcinogens and noncarcinogens. Section 708 also provides rules for use of indicator harmful substances.

(d) 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.

(5) Threshold criteria for all clean up actions. Section 360 specifies that all clean up actions conducted under this regulation 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 actions must meet these criteria regardless of other factors such as cost or technical limitations.

(6) 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 Sections 720 through 740. The provisions for establishing restoration time frames are in Section 360.

(7) Administrative principles for clean up standards.

(a) Remedial actions under this regulation 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 VII of this regulation and Section 360.

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

(c) 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 regulation shall be established which provide conservative estimates of human health and environmental risks which protect susceptible individuals as well as the general population.

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

(e) 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.

(f) 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 regulation, cost may be appropriate for certain other determinations related to clean up standards. Cost may be considered when selecting an appropriate clean up action.

(g) At many sites, there is more than one (1) harmful substance and more than one (1) pathway for harmful substances to get into the environment. For many sites there is more than one (1) 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.

(h) 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 regulation 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.

(i) 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.

Section 702 - General policies.

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

(2) **Relationship to federal clean up law.** When evaluating clean up actions performed under the federal clean up law, the division shall consider Sections 360 and 700 through 760 to be a legally applicable requirement under Section 121(d) of the Federal Clean up Law.

(3) **Regulation update.** The division may review and, as appropriate, update Sections 700 through 760.

(4) **Institutional controls.** Institutional controls under Section 440 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 Sections 720 through 760.

(5) **Burden of proof.** Any person responsible for undertaking a clean up action under this regulation 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 that the person undertaking the clean up actions met this burden of proof.

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

Section 704 - Use of method A.

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

(a) Sites undergoing routine clean up actions as defined in Section 450; or

(b) Sites where numerical standards are available in applicable Commonwealth and federal laws for all indicator harmful substances in all media of concern.

(2) Method A clean up levels shall be established in accordance with the procedures in Sections 720 through 760. Method A clean up levels shall be at least as stringent as all of the following:

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

(b) For individual harmful substances not addressed under (a) of this subsection, concentrations that do not exceed natural background levels for the substance in question.

(3) The division may establish method A clean up levels more stringent than those required by subsection (2) 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.

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

Section 705 - Use of method B.

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

(2) Method B clean up levels shall be established in accordance with the procedures in Section 720 through 760. Method B clean up levels shall be at least as stringent as all of the following:

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

(b) Concentrations which are estimated to result in no adverse effects on the protection and propagation of aquatic and terrestrial life;

(c) 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 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 (1) 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.

(3) The division may establish method B clean up levels that are more stringent than those required by subsection (2) 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.

(4) Concentrations of individual harmful substances established under subsections (2) and (3) 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 (1) pathway of exposure. These adjustments shall be made in accordance with the procedures in Section 708. In making these adjustments, the hazard index shall not exceed one (1) 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 (1) exposure pathway, including clean up levels based on applicable Commonwealth and federal laws.

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

Section 706 - Use of method C.

(1) 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 (1) 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 Section 440, and that one (1) or more of the following conditions exist:

(a) 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 (2) of this section; or

(b) 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 regulation, 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 (2) 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.**

(c) 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 (2) of this section.

(2) Method C clean up levels shall be established in accordance with the criteria in Sections 720 through 760. Method C clean up levels shall be at least as stringent as all of the following:

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

(b) Concentrations which are estimated to result in no significant adverse effects on the protection and propagation of aquatic and terrestrial life;

(c) 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 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 (1) 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;

(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.

(3) The division may establish method C clean up levels that are more stringent than those required by subsection (2) 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.

(4) Concentrations of individual harmful substances established under subsections (2) and (3) 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 (1) pathway of exposure. These adjustments shall be made in accordance with Section 708. In making these adjustments, the hazard index shall not exceed one (1) 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 (1) exposure pathway, including clean up levels based on applicable Commonwealth and federal laws.

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

Section 707 - Analytical considerations. Reserved.

Section 708 - Human health risk criteria.

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

(2) Selection of indicator harmful substances.

(a) 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.

(b) 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.

(c) 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.

(3) Reasonable maximum exposure.

(a) 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.

(b) 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 720 through 760 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.

(c) Persons performing clean up actions under this regulation may utilize the evaluation criteria in Sections 720 through 760 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 Sections 350.

(d) Individuals or groups of individuals may be exposed to harmful substances through more than one (1) 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 (1) pathway, the 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 Sections 720 through 760 shall be adjusted downward to take into account multiple exposure pathways.

(4) 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.

(5) Multiple harmful substances.

(a) 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 (2) or more harmful substances with similar types of toxic response are assumed to be additive unless scientific evidence is available to demonstrate otherwise.

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

(c) For purposes of establishing clean up levels for noncarcinogens under methods B and C, the health threats resulting from exposure to two (2) 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 (1).

(d) 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}).

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

(6) Multiple pathways of exposure.

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

(b) Clean up levels based on one (1) pathway of exposure shall be adjusted downward to take into account exposures from more than one (1) exposure pathway. The number of exposure pathways considered at a given site shall be based on the reasonable maximum exposure scenario as defined in Section 708(3).

(c) For purposes of establishing clean up levels for noncarcinogens 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 (1).

(d) 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}).

(7) Methods for defining background concentrations.

(a) Sampling of harmful substances in background areas may be conducted to distinguish site-related concentration from nonsite related concentrations of harmful substances or to support the development of a method C clean up level under the provisions of Section 706. For purposes of this regulation, two (2) types of background may be determined, natural background and area background concentrations.

(b) 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.

(c) 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 (1) statistical method may be required at a site.

(8) Significant figures. Risk assessment results shall be presented using one (1) significant figure.

(9) 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.

Section 710 - Applicable Commonwealth and federal laws.

(1) Applicable Commonwealth and federal laws.

(a) All clean up actions conducted under this regulation shall comply with applicable Commonwealth and federal laws. For purposes of this regulation, 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 (3) of this section, are relevant and appropriate requirements.

(b) 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.

(2) 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.

(3) 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 710 through 760 identifies 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:

- (a) 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;
- (b) Whether the media regulated or affected by the requirement is similar to the media contaminated or affected at the site;
- (c) Whether the harmful substance regulated by the requirement is similar to the harmful substance found at the site;
- (d) Whether the entities or interests affected or protected by the requirement are similar to the entities or interests affected by the site;
- (e) Whether the actions or activities regulated by the requirement are similar to the clean up action contemplated at the site;
- (f) Whether any variance, waiver, or exemption to the requirements are available for the circumstances of the site;
- (g) Whether the type of place regulated is similar to the site;
- (h) 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
- (i) 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.

(4) **Variations.** For purposes of this regulation, 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.

(5) **New requirements.** The division shall consider new applicable Commonwealth and federal laws as part of the periodic review under Section 420. 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.

(6) Selection of clean up actions. To demonstrate compliance with Section 360, clean up actions shall comply with all applicable Commonwealth and federal laws in addition to the other requirements of this regulation.

(7) Interim actions. Interim actions conducted under this regulation shall comply with legally applicable requirements. The division may also determine, based on the criteria in subsection (3) of this section, that other requirements, criteria, or limitations are relevant and appropriate for interim actions.

Section 720 - Ground water clean up standards.

(1) General considerations.

(a) 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 these regulations.

(b) 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 regulation or other applicable Commonwealth and federal laws.

(2) Method A clean up levels.

(a) 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) Secondary maximum contaminant levels established under the Safe Drinking Water Act and published in 40 C.F.R. 143; and

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

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

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

(3) Method B clean up levels.

(a) 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 (2)(a) 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 issue guidance to further explain how to determine concentrations that will protect human health and the environment.

(b) The division may establish method B clean up levels that are more stringent than those required by subsection (3)(a) 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 subgroups;

(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.

(c) 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.

(4) Method C clean up levels.

(a) 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 Section 440, and that one (1) or more of the conditions in Section 706(1) exist.

(b) The division may establish method C clean up levels that are more stringent than those required by (b) of this subsection 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 (3)(b) of this section.

(c) 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.

(5) Point of compliance.

(a) For ground water, the point of compliance is the point or points where the ground water clean up levels established under subsections (2), (3), and (4) 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.

(b) 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.

(c) 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. 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.

(d) 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.

Section 730 - Surface water clean up standards.

(1) General considerations.

(a) 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.

(b) 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 regulation. 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.

(c) 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 regulation or other applicable Commonwealth and federal laws.

(2) Method A clean up levels.

(a) 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.

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

(3) Method B clean up levels.

(a) 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.

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

(4) Method C clean up levels.

(a) 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 Section 440, and that one (1) or more of the conditions in Section 706(1) exist.

(b) 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 (3)(a)(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.

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

(5) Point of compliance.

(a) 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.

(b) 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.

Section 740 Soil clean up standards.

(1) General considerations.

(a) 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 (2) and (3) 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;

(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.

(b) 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.

(2) 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.

(3) Method B clean up levels.

(a) 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 Section 720.

(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.

(b) The division may establish method B clean up levels that are more stringent than those required under (a) of this subsection, 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;

(iv) Concentrations more stringent than those in (b) of this subsection 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.

(4) Method C clean up levels.

(a) 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 Section 440, and that one (1) or more of the conditions in Section 706 (1)(a) exist.

(b) 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 Section 720.

(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.

(5) Point of compliance.

(a) The point of compliance is the point or points where the soil clean up levels established under subsections (2), (3), and (4) of this section shall be attained.

(b) 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.

(c) 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 (15) 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.

(d) The division recognizes that, for those clean up actions selected under Section 360 that involve containment of harmful substances, the soil clean up levels will typically not be met at the points of compliance specified in (b) and (c) of this subsection. 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 Section 360(7) are met.

Section 750 - Clean up standards to protect air quality. Reserved.

Section 760 - Sediment clean up standards. Reserved.

PART VIII — GENERAL PROVISIONS

Section 800 - Property access.

(1) **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:

(a) **Written notice to site owner and operator to the extent known to the division, sent through the United States Postal Service at least three (3) days prior to entry; or**

(b) **Notice to site owner and operator to the extent known to the division, in person or by telephone at least twenty-four (24) hours prior to entry.**

(2) **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.

(3) **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.

(4) **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.

(5) **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:

(a) **Provide access during normal business hours and allow the division to copy these documents; or**

(b) At the division's request, provide legible copies of the requested documents to the division.

(6) 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.

(7) 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 regulation shall affect site access authority granted under other Commonwealth laws and regulations.

(8) 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.

Section 810 - Worker safety and health.

(1) General provisions. Requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 651 et seq.) and regulations promulgated pursuant thereto shall be applicable to remedial actions taken under this regulation. 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 under this regulation do not constitute an exercise of statutory authority within the meaning of section (4)(b)(1) of the Occupational Safety and Health Act.

(2) 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.

Section 820 - Sampling and analysis plans.

(1) 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.

(2) 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.

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

Section 830 - Analytical and testing procedures.

Standard analytical procedures and methods shall be used for all actions taken under this regulation. 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 (2) weeks of receipt of the request or receipt of the results, whichever occurs later.

Section 840 - General submittal requirements.

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

(1) Cover letter. Include a letter describing the submittal and specifying the desired division action or response.

(2) Number of copies. Four (4) 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.

(3) Visuals. Maps, figures, photographs, tables, plan sheets, drawings, cross-sections shall be submitted consistent with procedures specified by the division.

(4) Sampling data. All sampling data shall be submitted consistent with procedures specified by the division.

(5) Appendix. Reports and plans shall include an appendix providing the principal information relied upon in preparation of the submittal.

Section 850 - Recordkeeping requirements.

(1) 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.

(2) Unless otherwise required by the division, records shall be retained for at least ten years from the date of completion of compliance monitoring.

(3) Records shall be retained by the person taking remedial action, unless the division requires that person to submit the records to the division.

Section 860 - Endangerment.

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.

Section 870 - 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.

Section 880 - Emergency actions.

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

Section 885 - Miscellaneous.

(1) 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.

(2) 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.

(3) Any person that installs a well, or has a well installed, for the purpose of satisfying the requirements of these regulations, 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 (1) week of receipt.

Section 890 - Severability.

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