

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

CHAPTER 65-115

VOLUNTARY RESPONSE PROGRAM REGULATIONS

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Chapter Authority: 1 CMC §§ 2646-2649; 1 CMC § 2650; 2 CMC § 3122; 2 CMC §§ 3511-3521.

Chapter History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

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

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adopted prior to the effective date of this Executive Order shall continue to be effective until revised, amended, repealed or terminated.”

Part 001 - General

§ 65-115-001 Authority and Scope

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(a) The Division of Environmental Quality (DEQ) is responsible for protecting, preserving, and enhancing the environmental quality of water, air, and land of the Commonwealth of the Northern Mariana Islands (CNMI).

(b) These regulations are promulgated by the Division of Environmental Quality pursuant to the Commonwealth Environmental Protection Act (CEPA) codified as amended at 2 CMC §§ 3101 to 3134, and the Commonwealth Solid Waste Management Act of 1989, codified as amended at 2 CMC §§ 3511-3521. These regulations and technical provisions shall have the force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of the Commonwealth of the Northern Mariana Islands.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a). The Commission inserted commas after the words “preserving” and “air” in subsection (a) pursuant to 1 CMC § 3806(g). The Commission corrected the phrase “codified as amended 2 CMC §§ 3101 to 3134” to “codified as amended at 2 CMC §§ 3101 to 3134” pursuant to 1 CMC § 3806(g).

§ 65-115-005 Purpose

These regulations specify the criteria a person must meet in order to qualify for liability protection from action by the DEQ for the release or threatened release of a harmful substance as defined under the DEQ Harmful Substance Cleanup Regulations.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

§ 65-115-010 Prohibitions

Facilities that are not eligible to enter this program include:

(a) A facility that is subject to a planned or ongoing federal removal action under CERCLA;

(b) A facility that is listed on the CERCLA National Priorities List or is proposed for listing; and

(c) A facility that is subject to a unilateral administrative order, a court order, and an administrative order on consent or judicial consent decree issued or entered into by EPA or DEQ.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the word “federal” in subsection (a) pursuant to 1 CMC § 3806(f).

Part 100 - Definitions

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§ 65-115-101 Definitions

- (a) “Days” shall mean calendar days, including weekends and holidays.
- (b) “Environmental remedial cleanup” means a remedial action at an affected site undertaken and financed by a person, which remedial action is subject to the oversight and approval by the DEQ, and with respect to which remedial action the person agrees to pay the DEQ’s site specific costs incurred in administration and oversight.
- (c) “Hazardous substance” means any hazardous substance specified in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601(14)(A)-(F), as amended (CERCLA), petroleum and petroleum products, and any hazardous waste as defined by the CNMI hazardous waste regulations, or as defined by the CNMI Harmful Substance Cleanup Regulations, NMIAC, § 65-40-010(w), as amended. The terms “hazardous substance” and “harmful substance” shall mean the same thing under these regulations.
- (d) “Nonresidential property” means any real property currently or previously used for industrial or commercial purposes, or both.
- (e) “Participation fee” means the following: one hundred dollars for noncommercial application fee, two hundred dollars for commercial application fee, and the assessment and cleanup permit fees deposit not to exceed five thousand dollars and all additional oversight cost reimbursements to be determined by DEQ pursuant to Part 400 of these regulations.
- (f) “Oversight cost” means any cost reasonably attributable to the site and may include cost of direct activities such as review of response action plans, site visits to project site, and the like; support cost of direct activities; and interest charges for delayed payments. The assessment and cleanup permit fees shall be waived for non-commercial applicants, if no viable and potentially liable commercial entity exists.
- (g) “Person” means any individual, partnership, co-partnership, firm, company, public or private corporation, association, joint stock company, trust estate, political subdivision, or any agency, board, DEQ of the CNMI or federal government, or any other legal entity whatever is recognized by law as the subject of rights and duties.
- (h) “Phase I Environmental Site Assessment” (“ESA”) means a noninvasive physical assessment of the real property and a records review conducted by a qualified environmental professional in accordance with American Society for Testing and Materials (ASTM) Standard E 1527-05, or as subsequently amended. A Phase I ESA report must be prepared following the format in Appendix X4 with the addition of a specific section on data gaps as defined in Section 12.7 of the ASTM E 1527-05 Standard.

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(i) “Phase II Environmental Site Assessment” means an invasive sampling investigation by a technical consultant or the environmental professional in accordance with American Society for Testing and Materials (ASTM) Standard E 1903-97 (Reapproved 2002) of those areas of concern, or recognized environmental conditions, identified in the Phase I ESA report for the site. Phase II investigations must be approved by the US Environmental Protection Agency.

(j) “Remediation” or “remedial action” means all appropriate actions taken to clean up contaminated real property, including but not limited to removal, remedial actions, and response actions as such terms are defined by CERCLA.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission inserted quotation marks around terms defined. The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The Commission corrected the cite to § 65-40-010(w) in subsection (c) pursuant to 1 CMC § 3806(g). The Commission struck the figures “\$100,” “\$200,” and “\$5000” in subsection (e) pursuant to 1 CMC § 3806(e). The Commission corrected “dollar” to “dollars” in subsection (e) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of the words “cost” in subsection (f), “federal” in subsection (g), and “environmental professional” in subsection (h) pursuant to 1 CMC § 3806(f).

Part 200 - Stage 1

§ 65-115-201 Application for Remediation

Any person, including but not limited to a person acquiring, disposing of or possessing a lien hold or leasehold interest on real property, or other circumstances as may be established by rule involving real property that is known to be or suspected to be contaminated by harmful substances, may apply to remediate the real property with oversight by the DEQ. Such application shall be made on forms provided by the DEQ and shall include the location of the real property, the legal description of the real property, a general description of the nature of the operations and activities and the dates, if known, that such activities occurred on the real property, the names of known past and present owners or operator of the real property, a description of the nature and extent of known or suspected contamination, and an application fee for either a non-commercial or a commercial application.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The sections of Part 200 were untitled in the 2014 regulations. The Commission titled them pursuant to 1 CMC § 3806(a). The Commission inserted a comma after the word “contamination” pursuant to 1 CMC § 3806(g).

§ 65-115-205 Submission of Application

Application forms may be submitted at any time from the completion of an ASTM E1527-05 Phase I environmental site assessment up through the development, but not including the implementation of a remedial action plan. The applicant shall submit copies

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of all reports prepared concerning the results of any site assessments, investigations, sample collections, and sample analyses completed to date with the application.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

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

§ 65-115-210 Application Review

The DEQ will review the application forms for completeness. The DEQ will return any form deemed incomplete to the person for completion. Upon receipt of all requested information, the DEQ will notify the person that the application form is complete.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

§ 65-115-215 Phase II ESA

Following the approval of an application, the applicant shall complete a Phase II ESA in accordance with the ASTM E 1903-97 (Reapproved 2002) Standards. The complete Phase II ESA shall be submitted to DEQ within one hundred eighty days following approval of the application.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission struck the figure “180” pursuant to 1 CMC § 3806(e).

§ 65-115-220 Report Review

The DEQ shall review the reports submitted and comment, within thirty days, on the completeness of the report and nature and extent of any additional required environmental site assessments to be conducted on the real property. The applicant shall complete all required additional work required by DEQ.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission struck the figure “30” pursuant to 1 CMC § 3806(e).

§ 65-115-225 Determination of Remedial Action (Stage 1)

Once the Phase II ESA is complete, as documented by the DEQ’s acceptance of the report, the DEQ shall determine if remedial action is necessary. If the DEQ determines that no remedial action is required, the DEQ will issue a Letter of Completion with respect to the specific Phase II ESA investigation. If the DEQ determines that remediation is required, the applicant may apply to enroll in Stage 2.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

§ 65-115-230 Withdrawal

An applicant may withdraw from the program at any time with written notification to DEQ. The application fee is non refundable.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

§ 65-115-235 Reservation of Rights

DEQ reserves all rights to require investigation and remediation by potential liable parties under CNMI law, including but not limited to the CNMI Harmful Substance Cleanup Regulations.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Part 300 - Stage 2

§ 65-115-301 Application for Voluntary Response Program

Any person completing the Phase II ESA process in Part 200 may apply to continue in the DEQ's Voluntary Response Program by completing an application available from the DEQ.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The sections of Part 300 were untitled in the 2014 regulations. The Commission titled them pursuant to 1 CMC § 3806(a).

§ 65-115-305 Oversight Agreement

Following the approval of an application, the applicant and DEQ shall execute an oversight agreement to be incorporated in the DEQ assessment and cleanup permit. The DEQ shall require the applicant to post a deposit, not to exceed five thousand dollars for the permit, which shall be used to cover the site-specific oversight costs to the DEQ.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission struck the figure "\$5,000" pursuant to 1 CMC § 3806(e).

§ 65-115-310 Remedial Action Plan Development

The applicant shall submit a remedial action plan to the DEQ for review and approval for any contamination identified in the Phase II ESA report. The applicant shall develop the remedial action plan following DEQ VRP Guidance.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

§ 65-115-315 Remedial Action Plan Review

DEQ shall review the remedial action plan and notify the applicant regarding comments requiring revision to the plan or approval of the plan.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

§ 65-115-320 Determination of Remedial Action (Stage 2)

The DEQ shall review reports of any additional environmental site assessments and make a determination, within sixty days, of any required remedial actions. If the DEQ determines that no remedial action is required, the applicant shall submit, if required by the director, a monitoring plan to the DEQ. Upon approval by the director, the plan, if required, shall be implemented by the applicant. If the DEQ determines that remediation is required, the applicant shall submit a revised remedial action plan to the DEQ for any contamination identified in the environmental site assessments.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission struck the figure “60” pursuant to 1 CMC § 3806(e).

§ 65-115-325 Contents of Remedial Action Plan

The DEQ shall review the remedial action plan. Remedial action plans shall be developed following DEQ guidance and include work plans, health and safety plans, testing protocols, and an analysis of alternatives. In addition, remedial action plans shall include appropriate monitoring plans as determined necessary by the DEQ based on the Phase II ESA analytical results. The DEQ shall, within ninety days, approve the plan if the plan satisfies the requirements of this section. The remedial action plan is subject to public review and comment prior to DEQ approval. The applicant shall provide public notice at its own expense in two local newspapers of the opportunity to comment on the plan, once during the week after the plan is submitted and once 4 weeks after the plan has been submitted. The deadline for comments shall be thirty days from the time the first notice is published.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission struck the figures “90” and “30” pursuant to 1 CMC § 3806(e).

§ 65-115-330 Implementation of Remedial Action Plan

Following approval of the remedial action plan by the DEQ, the applicant shall implement the remedial action plan.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

§ 65-115-335 Progress Reports

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During the implementation of the remedial action plan, the applicant shall submit to the DEQ, on forms provided by the DEQ, quarterly progress reports of such remedial action.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

§ 65-115-340 Additional Reports

The applicant shall submit to the DEQ a copy of all reports prepared concerning such remedial action.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

§ 65-115-345 Report Review

The DEQ shall review the remedial action report conducted in accordance with the provisions of the approved remedial action plan.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

§ 65-115-350 Termination of Participation

Nothing in this part shall limit the right of an applicant to terminate participation upon providing written notification to the DEQ. Upon receipt of notice of termination from the applicant, the DEQ shall refund any remaining deposit balance, after incurred costs are deducted, within sixty days.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission struck the figure “60” pursuant to 1 CMC § 3806(e). The Commission corrected the capitalization of the word “part” pursuant to 1 CMC § 3806(f).

§ 65-115-355 Enforcement Actions

Nothing in this part shall limit the DEQ’s ability to take action, including enforcement action under CNMI law as appropriate to prevent or mitigate any potential threats to human health and the environment.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the word “part” pursuant to 1 CMC § 3806(f).

§ 65-115-360 Appeals

The applicant may appeal in writing any decision of the DEQ under this part to the Director within thirty days of such decision. The Director, at his discretion, may hold a hearing or may decide the matter solely on the existing record. The Director shall issue a

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reasoned determination in writing of the matter appealed within ten days of the submission of all evidences and arguments.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission struck the figure “30” pursuant to 1 CMC § 3806(e). The Commission corrected the capitalization of the word “part” pursuant to 1 CMC § 3806(f).

§ 65-115-365 Letter of Completion

If the provisions set forth in this part are met, and the applicant has remitted all applicable permit fees, the DEQ shall issue, to the applicant, a Letter of Completion stating that no further action need be taken at the site related to any contamination identified in the environmental assessments and for which remedial action has been taken in accordance with the approved remedial action plan. Such letter, however, shall provide that the DEQ may require the person to conduct additional environmental site assessments or remedial actions in the event that any monitoring conducted at or near the real property or other circumstances indicate that additional contamination is present which was not identified by the environmental site assessments or for which remedial action was not taken according to the remedial action plan.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the word “part” pursuant to 1 CMC § 3806(f).

Part 400 - Reimbursement for DEQ Costs

§ 65-115-401 Fees

The DEQ shall be reimbursed for its site-specific costs incurred in administration and oversight of the voluntary response actions. Assessment and cleanup permit fees shall be determined by the number of hours that DEQ spends on oversight and investigation at a standard rate \$40 per hour. The DEQ shall furnish to the applicant a complete, full, and detailed accounting of the costs incurred by the DEQ for which the applicant is charged. The applicant may appeal any charge to the Director within thirty days of receipt of the bill. Appeal to the Director shall stay the required payment date until thirty days following the rendering of the written decision of the Director. The DEQ shall initially draw down its charges against the permit fee. Timely remittance of reimbursements, as provided in subsection 3 of this section*, to the DEQ is a condition of continuing participation. If, after the conclusion of the remedial action, a balance remains, the DEQ shall refund that amount within sixty days. If the DEQ fails to render any decision or take any action within the time period specified in these regulations, then the applicant shall not be required to reimburse the DEQ for costs incurred for DEQ’s time associated with the missed deadline.

* See Commission Comment.

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History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission struck the figures “30” and “60” pursuant to 1 CMC § 3806(e). The Commission inserted a comma after the word “full” pursuant to 1 CMC § 3806(g). The reference to “subsection 3 of this section” is unclear, as the 2014 regulations did not contain a subsection 3.

§ 65-115-405 Oversight Cost Account

All funds remitted by the participant conducting the voluntary response action shall be deposited into a separate account for oversight costs for each participant and shall be used by the DEQ for its administrative and oversight costs.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

§ 65-115-410 Termination for Cause

The DEQ may terminate participation in the program for cause. Grounds for termination include, but are not limited to:

- (a) Discovery of conditions that DEQ believe warrant action pursuant to the CNMI Harmful Substances Cleanup Regulations;
- (b) Failure to submit cost reimbursements within sixty days following notice from the DEQ that such reimbursements are due;
- (c) Failure to submit required information within ninety days following notice from the DEQ that such information is required;
- (d) Failure to submit a remedial action plan within ninety days following notice from the DEQ that such plan is due;
- (e) Failure to properly implement the remedial action plan; and
- (f) Continuing noncompliance with any of the provisions of these regulations.

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission struck the figure “60” from subsection (b) and “90” from subsections (c) and (d) pursuant to 1 CMC § 3806(e).

§ 65-115-415 Refund of Balance

Upon termination of the oversight agreement, and if there is a balance in the applicant’s participation fee after deducting costs incurred by the DEQ, such balance shall be refunded within sixty days as specified in § 65-115-401. Upon termination pursuant to § 65-115-410(b) through (e), if a balance remains in the applicant’s participation fee, such balance shall be forfeited and deposited in the fund.

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History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The Commission struck the figure “60” pursuant to 1 CMC § 3806(e).

Part 500 - Miscellaneous

§ 65-115-501 Severability

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

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

§ 65-115-505 Effective Date

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

History: Adopted 36 Com. Reg. 35473 (Sept. 28, 2014); Proposed 35 Com. Reg. 34343 (Sept. 28, 2013).

Commission Comment: The Commission struck the figure “10” pursuant to 1 CMC § 3806(e).