

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

CHAPTER 65-130

WATER QUALITY STANDARDS

Part 001 General Provisions

- § 65-130-001 Authority
- § 65-130-005 Purpose
- § 65-130-010 Anti-degradation Policy
- § 65-130-015 Definitions

Part 100 Classification of Water Uses

- § 65-130-101 Marine Waters
- § 65-130-105 Fresh Surface Waters
- § 65-130-110 Protection of Wetlands
- § 65-130-115 Protection of Groundwater

Part 200 Classification and Establishment of Water Use Areas

- § 65-130-201 Rota
- § 65-130-205 Tinian and Aguiguan
- § 65-130-210 Saipan
- § 65-130-215 Northern Islands

Part 300 Basic Water Quality Criteria Applicable to All Waters

- § 65-130-301 Basic Surface Water Quality Criteria
- § 65-130-305 Verification by Monitoring or Inspection

Part 400 Specific Water Quality Criteria

- § 65-130-401 Microbiological Requirements
- § 65-130-405 pH
- § 65-130-410 Nutrients
- § 65-130-415 Dissolved Oxygen
- § 65-130-420 Total Filterable Suspended Solids
- § 65-130-425 Salinity
- § 65-130-430 Temperature
- § 65-130-435 Turbidity
- § 65-130-440 Radioactive Materials
- § 65-130-445 Oil and Petroleum Products
- § 65-130-450 Toxic Pollutants
- § 65-130-455 General Considerations

Part 500 Mixing Zone in Receiving Waters

- § 65-130-501 Mixing Zones; When Permitted
- § 65-130-505 Establishment of Mixing Zone
- § 65-130-510 Prevention, Control, and Abatement
- § 65-130-515 Time Limit for Mixing Zone
- § 65-130-520 Mixing Zone Characteristics
- § 65-130-525 Criteria for Mixing Zone
- § 65-130-530 Dredging and Discharge of Dredged or Fill Material

Part 600 Water Quality Certification

- § 65-130-601 Water Quality Certification Required
- § 65-130-605 Submission of Water Quality Certification Request
- § 65-130-610 Public Notification and Public Hearing
- § 65-130-615 Determination of Water Quality Certification
- § 65-130-620 Water Quality Certification; General Provisions
- § 65-130-625 Water Quality Certification; Adoption of New or Revised Water Quality Standards

Part 700 Land Disposal of Wastewater

- § 65-130-701 General Applicability
- § 65-130-705 Submission of Land Disposal Plans
- § 65-130-710 Land Disposal in Coastal Lands
- § 65-130-715 Land Disposal in Groundwater Recharge Areas
- § 65-130-720 Discharge Limitations for Land Disposal of Wastewater

Part 800 Prohibitions

- § 65-130-801 Prohibitions

Part 900 Inspections and Right of Entry

- § 65-130-901 Inspections and Right of Entry

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

Part 1000 Notices of Violations, Administrative Orders, and Penalties

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

§ 65-130-1005 Grounds for Enforcement Actions

§ 65-130-1008 Enforcement Notice

§ 65-130-1010 Administrative Orders

§ 65-130-1015 Hearings

§ 65-130-1020 Emergency Suspension Provisions

§ 65-130-1025 Criminal Penalties

§ 65-130-1030 Determination of Penalties

§ 65-130-1035 Commonwealth Superior Court

Part 1100 Miscellaneous Provisions

§ 65-130-1101 Severability

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

Modified: 1 CMC § 3806(a), (f)

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

Chapter History: Amdts Adopted 44 Com. Reg. 48671 (July 28, 2022); Amdts Proposed 44 Com. Reg. 48390 (Apr. 28, 2022); Amdts Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Amdts Proposed 43 Com. Reg. 46895 (June 28, 2021); Amdts Adopted 40 Com. Reg. 40897 (Aug. 28, 2018); Amdts Proposed 40 Com. Reg. 40826 (July 28, 2018); Amdts Adopted 36 Com. Reg. 35400 (Aug. 28, 2014); Amdts Proposed 36 Com. Reg. 35171 (July 28, 2014); Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Amdts Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Amdts Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Amdts Adopted 19 Com. Reg. 15554 (Aug. 15, 1997); Amdts Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Amdts Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Amdts Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Amdts Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Amdts Adopted 5 Com. Reg. 2453 (Aug. 31, 1983); Amdts Proposed 5 Com. Reg. 2242 (July 29, 1983); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

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

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

The amendments proposed in 40 Com. Reg. 40826 (July 28, 2018) and adopted in 40 Com. Reg. 40897 (Aug. 28, 2018) included NMIAC §§ 65-130-001, 305, and 455. These sections were not amended but appear to be included because each section is adjacent to a portion of Chapter 130 that was amended.

Part 001 - General Provisions

§ 65-130-001 Authority

The regulations in this chapter have been promulgated by the BECQ in accordance with the Commonwealth Environmental Protection Act, (CEPA), 2 CMC §§ 3101 to 3134, Public Law 3-23; the Commonwealth Environmental Amendments Act, (CEAA), 1999,

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

Public Law 11-103; and the Commonwealth Groundwater Management and Protection Act (CGMPA), 1988, 2 CMC §§ 3311 to 3333, Public Law 6-12, of the Commonwealth, and under the provisions of the Clean Water Act, Pub. L. No. 92-500 (33 U.S.C. §§ 1251, et seq.) as force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of the Commonwealth. The BECQ shall apply these regulations and standards to all marine, fresh water bodies, and ground water in the Commonwealth.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-005 Purpose

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-010 Anti-degradation Policy

(a) Anti-degradation Policy

It shall be the public policy of the Commonwealth that:

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

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

(3) The three tiers of water quality protection that sustain the CNMI Anti-degradation policy are hereby established:

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

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

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

(ii) Tier 2: Waters where the quality exceeds the levels necessary to support protection and propagation of fish, shellfish, and wildlife and recreation in and on the water shall be maintained and protected, unless the Commonwealth finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing the lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality to occur the Commonwealth shall assure the following:

(A) The lower water quality is adequate to be fully protective of existing and designated uses,

(B) That after an analysis of alternatives, such a lowering is necessary to accommodate important economic or social development in the area in which the waters are located, provided that the analysis of alternatives evaluates a range of practicable alternatives that would prevent or lessen the degradation associated with the proposed activity and, if the analysis of alternatives identifies one or more practicable alternatives, the State shall only find that a lowering is necessary if one such alternative is selected for implementation.

(C) The cumulative impacts of all previous and reasonably foreseeable future actions be considered,

(D) That intergovernmental coordination and public participation be included in any determination,

(E) The highest statutory and regulatory requirements be achieved for all new and existing point sources, and

(F) That all cost effective and reasonable BMPs for non-point source control be employed.

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

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

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

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

(b) Requirements for Anti-degradation Review

(1) Any action which may lower water quality is subject to review for consistency with the anti-degradation policy. Existing permit programs requiring anti-degradation review include, at a minimum: CWA § 401 water quality certifications issued under part 600 of this chapter; and actions requiring a DCRM permit. The Administrator of BECQ may also require anti-degradation review for any other actions which have the potential to lower water quality, such as adoption or revision of regulations, land use plans, highway and

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

drainage master plans, and draft/proposed legislation. However, the results of such review shall be in the form of a notification letter only, unless the action is required to obtain a permit, license, or approval from BECQ. The provision of detailed water quality and economic data and analysis, if determined to be necessary by the Administrator under the requirements above for tier 2, shall be the responsibility of the party proposing the action.

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

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

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

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

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

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

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-015 Definitions

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

(b) “Acute toxicity” means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

- (c) “Administrator” means the Administrator of the Bureau of Environmental and Coastal Quality.
- (d) “Ambient conditions” means the existing physical, chemical, and biological water quality conditions at a specific location not influenced by anthropogenic sources. If the ambient condition of a waterbody varies over time, the ambient condition will be determined to be the prevailing highest quality ambient condition of the waterbody measured during an annual, seasonal, or shorter time period.
- (e) “Aquatic life” means fish, invertebrates, amphibians, and other organisms that inhabit Commonwealth waters at some stage of their life cycles.
- (f) “BECQ” means the Bureau of Environmental and Coastal Quality.
- (g) “Best Management Practices” or “BMPs” means a measure, facility, activity, physical, structural, or non-structural device, managerial, or operational practices approved by BECQ to be the most effective and practicable means (including technological, economic, and institutional considerations) that, when used singly or in combination, prevent or reduce pollutant discharges or otherwise protect water quality.
- (h) “Brackish waters” means waters with dissolved inorganic ions (salinity) greater than 500 ppm (parts per million), but less than 30,000 ppm.
- (i) “Chronic exposure value” means the threshold value at or below which there should be no unacceptable effects to aquatic organisms and waters’ DUs if the four-day concentration does not exceed the threshold value more than once every three years on the average.
- (j) “Chronic toxicity” means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as morbidity, carcinogenesis, or an alteration in growth rate or reproduction.
- (k) “Coastal waters” means all waters of a depth less than twenty fathoms, or waters up to distance of 1,000 feet off-shore from the mean high water line, whichever is the greater distance from the shoreline.
- (l) “Commonwealth” or “CNMI” means Commonwealth of the Northern Mariana Islands.
- (m) “Commonwealth waters” means all waters, whether fresh, brackish, or marine, including but not limited to streambeds, groundwater, and wetlands, surrounding or within the Commonwealth jurisdiction, which are commensurate to state waters in the continental United States as defined in the CWA.
- (n) “CWA” means the Clean Water Act, Pub. L. No. 92-500 as amended: 33 U.S.C. §§ 1251, et seq.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

- (o) “DCRM” means the Division of Coastal Resources Management.
- (p) “Designated use(s)” or “DU” means the waterbody goals of the CWA that may or may not be currently attained, which are assessed biennially as required by Sections 303(d), 305(b), 314, and 319 of the CWA.
- (q) “Existing uses(s)” means those designated uses actually attained in Commonwealth waters on or after November 28, 1975, whether or not they are included in the Commonwealth’s water quality standards in accordance with 40 CFR § 131.3.
- (r) “Fresh waters” means all waters with dissolved inorganic ions of less than 500 ppm.
- (s) “Ground water” means that part of the subsurface which is in the zone of saturation.
- (t) “LC₅₀” or “Lethal Concentration” means the concentration of a pollutant that kills 50% of the test animals exposed to the water during the observation period.
- (u) “Mean high water line” means a line which represents the intersection of the land with the water surface at the elevation of mean high water as calculated by the National Oceanic and Atmospheric Administration using tidal datum, based on the average of all the high water heights from official tide gauge records observed over a specified period.
- (v) “Mixing zone,” means an area of a surface waterbody of specified dimensions where a discharge undergoes dilution in the vicinity of the discharge point. A mixing zone is an allocated impact zone where water quality criteria can be exceeded but where acutely toxic conditions are prevented (excepted as defined within a limited zone of initial dilution) and where public health and welfare are not endangered.
- (w) “NPDES” means national pollution discharge elimination system.
- (x) “Oceanic waters” means all other marine waters outside of the twenty fathom depth contour or greater than 1,000 feet off-shore from the mean high water line, whichever is the greater distance from the shoreline.
- (y) “Pollutant” means any substance that causes pollution.
- (z) “Pollution” means the man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.
- (aa) “Receiving water(s)” means Commonwealth waters into which pollutants, wastes, or wastewaters are, or may be, discharged.
- (bb) “Toxic” means lethal, oncogenic, teratogenic or mutagenic, or otherwise damaging to man or other living organisms.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(cc) “Toxic pollutant” means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(dd) “Wastewater” means sewage, industrial waste, or other human or animal waste, or any combination of these, whether treated or untreated, plus any admixed storm water or land runoff.

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

(ff) “Wetlands” means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. The presence or absence of these three criteria (soils, plants, and hydrology) is considered when assessing the presence and value of wetland systems by applying the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Hawaii and Pacific Islands Region, except that no “federal nexus” is required. Wetlands include swamps, marshes, mangroves, lakes, natural ponds, surface springs, streams, estuaries, and similar areas.

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 2453 (Aug. 31, 1983); Proposed 5 Com. Reg. 2242 (July 29, 1983); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Part 100 - Classification of Water Uses

§ 65-130-101 Marine Waters

(a) Class AA

(1) It is the objective of this class that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-related source or actions. To the extent possible, the wilderness character

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

of such areas shall be protected. Mixing zones for dredging and the discharge of dredged or fill material may be permitted as allowed under NMIAC § 65-130-525. Mixing zones for any other discharge into these waters are prohibited.

(2) Siting of any source of wastewater discharge within 50 feet of any waterbody, or within 25 ft of the top of any cliff/steep embankment (greater than 10 ft vertical drop or having greater than 50% slope) above any waterbody is prohibited. This setback is a minimum setback and any additional setbacks listed in the CNMI DCRM Regulations [NMIAC, title 15, chapter 10] or the CNMI Wastewater Treatment and Disposal Rules and Regulations [NMIAC, title 65, chapter 120] shall apply.

(3) The uses to be protected in this class of waters are to support the propagation of aquatic life: fish and shellfish consumption, conservation of coral reefs and wilderness areas, oceanographic research, aesthetic enjoyment and primary contact recreation in and on the water without risk to human health.

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

(b) Class A

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

(2) Any other use shall be allowed as long as it is compatible with the protection and propagation of aquatic life, fish, and shellfish consumption, and with primary contact recreation in and on the water without risk to human health. Such waters shall be kept clean of solid waste, oil and grease, and shall not act as receiving waters for any effluent which has not received the best degree of treatment of control practicable under existing technological and economic conditions and compatible with standards established for this class. A mixing zone may be approvable in such waters.

(3) Siting of any source of wastewater discharge within 50 feet of any waterbody, or within 25 ft of the top of any cliff/steep embankment (greater than 10 ft vertical drop or having greater than 50% slope) above any waterbody is prohibited. This setback is a minimum setback and any additional setbacks listed in the CNMI DCRM Regulations [NMIAC, title 15, chapter 10] or the CNMI Wastewater Treatment and Disposal Rules and Regulations [NMIAC, title 65, chapter 120] shall apply.

Modified, 1 CMC § 3806(g).

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-105 Fresh Surface Waters

(a) Class 1

(1) It is the objective of this class that these waters remain in their natural state as nearly as possible with an absolute minimum pollution or alteration of water quality from any

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

human related source or action. To the extent possible, the wilderness character of such areas shall be protected. Wastewater discharges and mixing zones into these waters are prohibited.

(2) Siting of any source of wastewater discharge within 50 feet of any waterbody, or within 25 ft of the top of any cliff/steep embankment (greater than 10 ft vertical drop or having greater than 50% slope) above any waterbody is prohibited. This setback is a minimum setback and any additional setbacks listed in the CNMI DCRM Regulations [NMIAC, title 15, chapter 10] or the CNMI Wastewater Treatment and Disposal Rules and Regulations [NMIAC, title 65, chapter 120] shall apply.

(3) The uses to be protected in this class of water are for: domestic water supplies; food processing; the support and propagation of aquatic life; fish and shellfish consumption groundwater recharge; aesthetic enjoyment; and primary contact recreation in and on the water without risk to human health.

(b) Class 2

(1) It is the objective of this class of waters that their use for the support and propagation of aquatic life, fish, and shellfish consumption, agricultural and industrial water supplies, and that secondary contact recreation in and on these waters not be limited in any way. Secondary contact recreation may include activities with minimal bodily contact with waters. Such waters shall not act as receiving waters for any discharge that has not received the best degree of treatment or control practical under technological and economic conditions and compatible with the standards established for this class. A mixing zone is permissible in these waters.

(2) Siting of any source of wastewater or discharge within 50 feet of any waterbody, or within 25 ft of the top of any cliff/steep embankment (greater than 10 ft vertical drop or having greater than 50% slope) above any waterbody is prohibited. This setback is a minimum setback and any additional setbacks listed in the CNMI DCRM Regulations [NMIAC, title 15, chapter 10], or the CNMI Wastewater Treatment and Disposal Rules and Regulations [NMIAC, title 65, chapter 120] shall apply.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-110 Protection of Wetlands

(a) Wetlands are Commonwealth waters and are subject to the provisions of this chapter. Sources of pollution shall not cause destruction or impairment of wetlands and shall meet the goals and standards set forth in the DCRM Rules and Regulations [NMIAC, title 15, chapter 10]. All wetlands are to remain in as near their natural state as possible except as otherwise authorized and shall be protected against sources of pollution to support the propagation of aquatic life. All provisions of the regulations in this chapter apply to all wetlands unless replaced by site specific or wetlands water quality standards adopted by the Commonwealth and approved by EPA.

(b) Siting of any source of wastewater discharge within 50 feet of any waterbody, or within 25 ft of the top of any cliff/steep embankment (greater than 10 ft vertical drop or having greater than 50% slope) above any waterbody is prohibited. This setback is a minimum setback and any additional setbacks listed in the CNMI DCRM Regulations [NMIAC, title 15, chapter 10] or the CNMI Wastewater Treatment and Disposal Rules and Regulations [NMIAC, title 65, chapter 120] shall apply.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

§ 65-130-115 Protection of Groundwater

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

Part 200 - Classification and Establishment of Water Use Areas

§ 65-130-201 Rota

(a) Class AA

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

(b) Class A

The coastal waters known as East Harbor and West Harbor.

(c) Class 1

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

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

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

§ 65-130-205 Tinian and Aguigan

(a) Class AA

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

(b) Class A

The coastal waters known as San Jose Harbor.

(c) Class 1

All fresh surface waters on Tinian and Aguigan.

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

§ 65-130-210 Saipan

(a) Class AA

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

(b) Class A

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

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

(c) Class 1

All fresh surface waters on Saipan.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-215 Northern Islands

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

(a) Class AA

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

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

(b) Class A

The coastal and oceanic waters surrounding Farallon de Medinilla.

(c) Class 1

All fresh surface waters in the Northern Islands.

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

Part 300 - Basic Water Quality Criteria Applicable to All Waters

§ 65-130-301 Basic Surface Water Quality Criteria

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

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

§ 65-130-305 Verification by Monitoring or Inspection

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

- (a) Materials that will settle to form objectionable sludge or bottom deposits.
- (b) Floating debris, oil, grease, scum, or other floating materials.
- (c) Substances in amounts sufficient to produce undesirable taste, odor, or detectable off flavor in the flesh of fish, shellfish, or other aquatic life; or in amounts sufficient to produce odor or turbidity in the water, or other conditions that alter the ambient conditions of the water.
- (d) High temperatures; biocides; pathogenic organisms; toxic, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human health or aquatic life in amounts sufficient to interfere with any designated use of the water.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(e) Soil particles as a result of erosion on land from earth moving (e.g., such as construction of public works; highways; subdivisions; recreational; commercial, or industrial development; or the cultivation and management of agricultural lands) that adversely affect the designated uses of the water.

(f) Substances or conditions or combinations thereof in concentration that produce undesirable impacts to aquatic life.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Amdts Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Part 400 - Specific Water Quality Criteria

§ 65-130-401 Microbiological Requirements

(a)

Microbiological Requirements	Applicable to:
(1) Enterococci The Enterococci concentration shall not exceed a geometric mean of 35 Most Probable Number (MPN) per 100 mL based on samples taken in any 30-day interval. No single sample result shall exceed 130 Enterococci MPN per 100 mL.	All Waters
(2) <i>E. coli</i> The <i>E. coli</i> concentration shall not exceed a geometric mean of 126 Most Probable Number (MPN) per 100 mL based on samples taken in any 30-day interval. The Statistical Threshold Value is 410 <i>E. coli</i> MPN per 100 mL.	All Fresh Waters

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

Modified, 1 CMC § 3806(g).

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 40 Com. Reg. 40897 (Aug. 28, 2018); Proposed 40 Com. Reg. 40826 (July 28, 2018); Adopted 36 Com. Reg. 35400 (Aug. 28, 2014); Proposed 36 Com. Reg. 35171 (July 28, 2014); Adopted 36 Com. Reg.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

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

§ 65-130-405 pH

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-410 Nutrients

Parameter	Concentration Shall Not Exceed (mg/1)	Applicable To
Nitrate-Nitrogen	0.20	AA
	0.50	A, 1, 2
Total Nitrogen	0.4	AA
	0.75	A, 1
	1.50	2
Orthophosphate	0.025	AA
	0.05	A
	0.10	1, 2
Total Phosphorus	0.025	AA
	0.05	A
	0.10	1, 2
Ammonia (un-ionized)	0.02	AA, A, 1, 2

When ambient conditions exceed these criteria, there shall be no worsening of water quality from ambient conditions.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Amdts Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-415 Dissolved Oxygen

Concentration of dissolved oxygen in all waters shall not be less than 75% saturation. When ambient conditions are less than 75% saturation, there shall be no worsening of water quality from ambient conditions.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-420 Total Filterable Suspended Solids

Total filterable suspended solids	Applicable to
Concentrations of suspended matter at any point shall not exceed 5 mg/l. When ambient conditions exceed this criteria, there shall be no worsening of water quality from ambient conditions.	AA, 1
Concentrations of suspended matter at any point shall not exceed 40 mg/l. When ambient conditions exceed this criteria, there shall be no worsening of water quality from ambient conditions.	A, 2

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

§ 65-130-425 Salinity

(a) Marine waters: No alterations of the marine environment shall occur that would alter the salinity of marine or estuarine waters more than 10% from ambient conditions or which would otherwise adversely affect the indigenous biota and sedimentary patterns.	AA, A
(b) Fresh water: The maximum allowable concentration of chlorides and sulfates shall be 250 mg/l, and the total dissolved solids shall not exceed 500 mg/l. In addition, the salinity of fresh water sources and wetlands shall not be increased by more than 20% from ambient conditions. When ambient conditions exceed 250 mg/l chlorides and/or sulfates and 500 mg/l total dissolved solids, there shall be no worsening of water quality from ambient conditions.	1, 2

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

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

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

§ 65-130-430 Temperature

Water temperature shall not vary by more than 1.0°C from the ambient conditions.	AA, A, 1, 2
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History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-435 Turbidity

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-440 Radioactive Materials

The concentration of radioactivity shall not exceed the values listed in the Code of Federal Regulations, Title 10, Part 20, Appendix B, Effluent Concentrations, Column 2. When ambient conditions exceed listed values, there shall be no worsening of water quality from ambient conditions.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-445 Oil and Petroleum Products

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

- (a) Be detectable as a visible film, sheen, or discoloration of the surface, or cause an objectionable odor.
- (b) Cause tainting of fish or other aquatic life, be injurious to the indigenous biota, or wildlife, or objectionable taste in drinking water.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(c) Form an oil deposit on beaches or shoreline, on marine debris or on the bottom of a body of water.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-450 Toxic Pollutants

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

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

(c) In order to determine compliance with this section § 65-130-450, the Administrator may require additional studies of indicator organisms which include, but are not limited to, analyses of species diversity, species abundance, reproductive success, population density, or growth anomalies, considering, effects on human health due to bio-concentration of toxic pollutants.

(d) BECQ hereby incorporates the U.S. Environmental Protection Agency's National Recommended Water Quality Criteria. *U.S. EPA, National Recommended Water Quality Criteria – Aquatic Life Criteria Table* (December 21, 2018), available at <https://www.epa.gov/wqc/national-recommended-water-quality-criteria-aquatic-life-criteria-table>. The concentration of toxic pollutants shall not exceed EPA's aquatic life criteria for freshwater or saltwater, whichever is appropriate.

(1) Acute Toxicity Standards: All Commonwealth waters shall be free from pollutants in concentrations which exceed the acute standards listed in the National Recommended Water Quality Criteria for fresh and marine waters.

(2) Chronic Toxicity Standards: No pollutant in all Commonwealth waters shall exceed concentrations over a four-day average of the chronic standards listed in the National Recommended Water Quality Criteria for fresh and marine waters more than once in three years.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(e) BECQ hereby incorporates the U.S. Environmental Protection Agency's National Recommended Water Quality Criteria established pursuant to CWA 304(a). U.S. EPA, *National Recommended Water Quality Criteria – Human Health Criteria Table* (2018), available at <https://www.epa.gov/wqc/national-recommended-water-quality-criteria-human-health-criteria-table>.

(f) In waters designated for use as a source of public water supply, the human health numeric criteria shall be those listed in the EPA 2002 publication, Appendix 1, for water plus organism consumption and shall be at least as stringent as the maximum contaminant levels for drinking water established in the CNMI Drinking Water Regulations [NMIAC, title 65, chapter 20]. In waters not designated as a source of public water supply, the human health numeric criteria shall be those listed in the EPA 2002 publication, Appendix 1, for organism consumption only.

(1) The human health numeric criteria for arsenic in the EPA 2002 publication are an exception. These arsenic criteria are excluded from the CNMI standards, and instead, the CNMI human health criterion for arsenic is 5 µg/L.

(2) The human health numeric criteria for per- and polyfluoroalkyl substances (PFAS) are also an exception. The EPA 2002 publication does not establish human health numeric criteria for PFAS. Instead, the human health criteria for PFAS in waters listed as a source of public water supply are:

(i) 0.00007 mg/L (70 ng/L; 70 parts per trillion) for the sum of the concentrations of each of the following PFAS chemicals:

CAS No.	Contaminant
1763-23-1	Perfluorooctane Sulfonic Acid (PFOS)
335-67-1	Perfluorooctanoic Acid (PFOA)
375-95-1	Perfluorooctanoic Acid (PFNA)

and

(ii) 0.0000044 mg/L (4.4 ng/L; 4.4 parts per trillion) for the concentration of Perfluorooctanoic Acid (PFNA); and

(iii) if a more stringent MCL has been established in the CNMI Drinking Water Regulations [NMIAC, title 65, chapter 20], the more stringent MCL shall apply.

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

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

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

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

History: Adopted 44 Com. Reg. 48671 (July 28, 2022); Proposed 44 Com. Reg. 48390 (Apr. 28, 2022); Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 40 Com. Reg. 40897 (Aug. 28, 2018); Proposed 40 Com. Reg. 40826 (July 28, 2018); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-455 General Considerations

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

(2) References for approved methods are: EPA 821-R-02-013 Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, Fourth Edition, 2002; or EPA 821-R-02-012 Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Fifth Edition, 2002; or EPA 600/4-600 R-95/136 Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine Estuarine Organisms, Cincinnati, Ohio, EMSL, May, 1995.

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

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

(d) The health and life history characteristics of aquatic life in waters affected by controllable water quality factors shall not differ significantly from those for the same waters in areas unaffected by controllable water quality factors. Numeric biological indices

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

shall be used as a method to determine the level of use support of aquatic life and aquatic habitat in any water classification and for monitoring as required for applicable permits.

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

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

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

Part 500 - Mixing Zone in Receiving Waters

§ 65-130-501 Mixing Zones; When Permitted

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-505 Establishment of Mixing Zone

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

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

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

§ 65-130-515 Time Limit for Mixing Zone

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

§ 65-130-520 Mixing Zone Characteristics

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

§ 65-130-525 Criteria for Mixing Zone

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

(a) Mixing zones shall be used solely for mixing of the discharge in Commonwealth waters. Mixing within the zone must be achieved as quickly as possible through the use of a diffuser or other apparatus that ensures the discharge is mixed within the allocated dilution water in the smallest practicable area.

(b) A mixing zone may have a sub area within the immediate vicinity of the discharge point termed a zone of initial dilution.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

- (c) The concentrations of toxic pollutants at or beyond the limit of the zone of initial dilution shall not exceed the acute aquatic life water quality criteria of § 65-130-450. The dimensions of the zone of initial dilution must be such that lethality to organisms passing through the zone of initial dilution is prevented.
- (d) At the boundary of the mixing zone the water shall comply with the water quality standards set forth for the water classification in these regulations.
- (e) Where two or more mixing zones are in proximity to each other, mixing zones shall be defined so that a continuous zone of passage for aquatic life is available.
- (f) For the protection of aquatic life resources, including species listed as threatened or endangered under Section 4 of the Endangered Species Act, a mixing zone cannot be used for, or considered as, a substitute for wastewater treatment.
- (g) Chronic aquatic life and human health criteria apply at and beyond the boundary of the mixing zone.
- (h) Mixing zones shall not be allowed in Commonwealth waters with insufficient currents available for dispersion of pollutants.
- (i) Mixing zones shall be limited in extent as practicable, and dimensions shall be established through the application of a publicly available or proprietary plume dispersion model, as approved by BECQ.
- (j) All discharges to marine waters will comply with the ocean discharge criteria promulgated under § 403(c) of the CWA.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

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

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

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(2) The proposed activity satisfies the anti-degradation policy requirements described in § 65-130-010 of this chapter.

(b)(1) Dredging and the discharge of dredged or fill material can adversely affect colonies of reef building organisms by burying them, by releasing contaminants such as hydrocarbons into the water column, by reducing light penetration through the water, and by increasing the level of suspended particulates. Coral organisms are extremely sensitive to even slight reductions in light penetration or increases in suspended particulates (i.e., turbidity). These adverse effects can reduce health and resiliency for a variety of coral species, which in turn provide habitat for aquatic life.

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

(A) Changing water circulation patterns;

(B) Releasing nutrients that increase undesirable algal populations;

(C) Releasing chemicals that adversely affect plants and animals;

(D) Increasing turbidity levels, thereby reducing light penetration and hence photosynthesis; and

(E) Changing the capacity of a vegetated shallow to stabilize bottom materials and decrease channel shoaling.

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

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

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

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

(iii) For activities which have the potential to adversely affect coral reproduction, a stoppage period around the May, June and/or July full moon(s) (to be determined by BECQ), is required. The stoppage period, if determined to be applicable, shall be no less than twenty-one calendar days around each full moon determined by BECQ to influence

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

coral spawning. In determining whether an activity has the potential to affect coral spawning, BECQ shall consider all of the following:

- (A) The magnitude of the sediment plume generated by the proposed activity;
 - (B) The most likely extent and directions of drift of the sediment plume;
 - (C) The type of sediment and its composition; and
 - (D) The proximity of broadcast spawning coral species to the proposed activity and expected sediment plume.
- (iv) A specified distance up-current and down-current from the permitted activity at which applicable water quality criteria must be met (i.e., a mixing zone). Mixing zones for dredge and fill activities shall be kept as small as practicable, and shall not exceed 300 feet down-current and 150 feet up-current. Down-current distance maybe increased to up to 600 feet where typical currents can be shown to make the use of BMPs ineffective;
- (v) Any additional protective measures, limitations, monitoring or mixing zone requirements that the Administrator identifies as being necessary to protect resources of concern.

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004).

Part 600 - Water Quality Certification

§ 65-130-601 Water Quality Certification Required

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

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 15 Com. Reg. 11015 (Oct.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

15, 1993); Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

§ 65-130-605 Submission of Water Quality Certification Request

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

- (1) The name and contact information of the applicant(s);
- (2) A description of the proposed project, and of any discharge into Commonwealth waters which may result from the conduct of any activity including, but not limited to, the construction or operation of the project. This description shall include the characteristic of the discharge; the applicable federal license or permit; and the location or locations at which such discharge may enter Commonwealth waters;
- (3) The estimated date or dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;
- (4) If applicable, a description of the methods and means proposed to monitor the discharge and the equipment or measures planned to treat, control, or manage the discharge; and
- (5) If applicable, a list of all other federal or territorial authorizations required for the proposed project, including all approvals or denials already received.

(b) The Administrator may require the submission of additional information after a certification request has been filed. Processing of the certification request shall begin when the Administrator has received a certification request that the Administrator determines in the Administrator's discretion satisfies the requirements of § 65-130-605(a). The Administrator shall notify the applicant, in writing, within thirty calendar days of the submission of certification request, if a certification request is incomplete or otherwise deficient. For certification requests which are eligible for waiver of certification under § 65-130-615(g), the Administrator shall notify the applicant within fourteen calendar days if a certification request is incomplete or otherwise deficient. A description of the type of additional information necessary will be included with such a written notice. Failure to provide additional information shall be sufficient grounds for denial of certification.

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

(d) The Administrator shall act on a request for certification within a period which shall not exceed one year.

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

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

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

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

(iii) Any small family residential activity requiring a 401 water quality certification resulting in a clearing that does not exceed 1000 square meters is required to obtain a water quality certification and shall pay a fee of \$250. Any residential activity exceeding 1000 square meters must pay an additional fee of \$5 per 100 square meters or fraction thereof.

(iv) Any permit for which certification is sought that falls under a “nationwide permit” issued under Section 404 of the CWA and for which certification may be waived as allowed under § 65-130-615(g) shall pay a filing fee of \$250.

(2) This filing fee shall be submitted prior to the issuance of public notification pursuant to § 65-130-610 and shall not be refunded nor applied to any subsequent water quality certification following final action or denial of a water quality certification. Any federal or Commonwealth government agency shall be exempt from paying filing fees.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

§ 65-130-610 Public Notification and Public Hearing

(a) Within five calendar days after determining a certification request to be complete in accordance with § 65-130-605, and after the appropriate filing fee has been received, BECQ shall prepare a public notification regarding the certification request. The notice shall include the name and contact information of the applicant, a brief description of the activity and of the discharge involved in the proposed project for which certification is being sought.

(b) Reserved.

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

(d) The public comment period shall be for 30 days from the date of the first publication of the notice, unless BECQ determines that a shorter public comment period is needed.

(e) The Administrator may, upon request, provide the opportunity for public hearing(s) to consider issuance of a water quality certification. If the Administrator determines to provide a public hearing, BECQ must publish notice of the proposed day and time of the scheduled public hearing and location in the manner established in subsection (c) above. The Administrator shall inform the applicant, in writing, that a public hearing has been scheduled.

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Amdts Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

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

§ 65-130-615 Determination of Water Quality Certification

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

- (1) The certification request made by the applicant to the licensing or permitting agency and the information contained in such certification request which is relevant to water quality considerations,
- (2) The certification request materials submitted pursuant to § 65-130-605,
- (3) Comments received during the public comment period,
- (4) The record of a public hearing held pursuant to § 65-130-610, and
- (5) Any other information and data that the Administrator deems relevant.

(b) BECQ shall not grant a water quality certification for any activity unless the activity has been determined to be consistent with anti-degradation policy through the satisfaction of all applicable provisions contained in § 65-130-010 of this chapter.

(c) The contents of the water quality certification issued by BECQ shall include:

- (1) The name and contact information of the applicant;
- (2) Reference to the certification request materials which were evaluated in making the certification, identified by date received, and federal license or permit application number or code where applicable;
- (3) A statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;
- (4) A statement (or statements) detailing how the activity has been determined to be consistent with the anti-degradation policy in accordance with § 65-130-010(b);
- (5) A statement of any conditions which the Administrator deems necessary with respect to the discharge or the activity, including the conditions specified under § 65-130-530 for dredge and fill activities; and
- (6) Any such other information as the Administrator may determine to be appropriate.

(d) If the Administrator, after considering the information submitted pursuant to subsection (a), determines that there is reasonable assurance that applicable water quality standards will not be violated, and the proposed methods of control will be applied to a discharge which is the result of any activity including, but not limited to, the construction and operation of facilities, then the Administrator shall grant or grant with conditions the certification. Any grant of certification with conditions shall be in writing and shall for each condition include (i) a statement explaining why the condition is necessary to assure

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

that the discharge will comply with water quality standards, and (ii) a citation to a federal or state law that authorizes the condition. If the Administrator cannot make such a determination, then the Administrator shall deny the certification in a writing stating (i) the specific water quality standards with which the discharges will not comply, (ii) a statement explaining why the discharges will not comply with the identified water quality standards, and (iii) if the denial is due to insufficient information, a description of the specific water quality data or information, if any, that would be needed to assure that the discharges will comply with water quality standards.

(e) Reserved.

(f) If the Administrator fails to act on a completed certification request within the time required by § 65-130-605(d), then the certification requirements of this section shall be waived with respect to federal licenses or permits.

(g) If the discharge in question is the result of one of the activities which receives a US Army Corps of Engineers Nationwide Permit or Letter of Permission for the discharge of dredge and fill materials and requires individual certification, then the Administrator will determine, on a case-by-case basis, which projects are considered to be minor and non-controversial. Certification requirements of this section may be waived for minor and non-controversial activities within the time required by § 65-130-605.

(h)(1) Certifications for storm water discharges associated with industrial and construction site activities, as described in 40 CFR part 122.26, covered under a United States Environmental Protection Agency, National Pollutant Discharge Elimination System (NPDES) General Permit, may be granted or granted with conditions provided the following conditions are met:

(i) A BECQ section 401 water quality certification has been issued to the United States Environmental Protection Agency for the particular NPDES general permit associated with the discharge;

(ii) All conditions and requirements set forth in the applicable United States Environmental Protection Agency, Final National Pollutant Discharge Elimination System (NPDES) General Permits are complied with;

(iii) A storm water pollution prevention plan for storm water discharges associated with industrial activities or from construction sites is approved by the Administrator of BECQ prior to submission of the notice of intent (NOI), EPA form 3510-6. For facilities with current storm water discharges associated with industrial activities, a storm water plan is submitted within thirty calendar days of adoption of this chapter;

(iv) A NOI to be covered by the general permit for discharges associated with industrial activities or for discharges from construction activities is submitted to BECQ and USEPA, Region IX, accompanied by a storm water pollution prevention plan approval letter from BECQ;

(v) The NOI is postmarked seven calendar days prior to any storm water discharges and a copy is submitted to the Administrator of BECQ no later than seven calendar days prior to any storm water discharges;

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

(vi) For earthmoving or land clearing activity that would also require issuance of a permit under the CNMI Earthmoving and Erosion Control Regulations [NMIAC, title 65, chapter 30], a copy of the submitted permit application (and, if available, issued permit) is submitted to BECQ along with the certification request; and

(vii) All monitoring reports required by the respective general storm water permits are submitted to BECQ.

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

Modified, 1 CMC § 3806(g).

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

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

(a) Where any facility or activity has received certification pursuant to § 65-130-615 in connection with the issuance of a federal license or permit for construction, and where such facility or activity is not required to obtain an operating license or permit, the Administrator, prior to the operation of such facility or activity, shall be afforded the opportunity to perform an initial inspection of such facility or activity for the purpose of determining if the manner in which such facility or activity will be operated or conducted will violate applicable water quality standards.

(b) If the Administrator, after the initial inspection pursuant to subsection (a) determines that operation of the proposed facility or activity will violate applicable water quality standards, the Administrator shall so notify the applicant and the federal licensing or permitting agency in writing, and shall recommend remedial measures necessary to bring the certified project into compliance with the certification

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

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

(a) Reserved.

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).

Part 700 - Land Disposal of Wastewater

§ 65-130-701 General Applicability

Any action or activity that results in the disposal of wastewater on land in excess of fifty-five gallons per day requires the approval of the Administrator of BECQ pursuant to this Part 700. Types of wastewater and pollutants discharges that need approval prior to land disposal include but are not limited to reverse osmosis brine and oil/water separator discharges.

(a) The disposal of wastewater through an individual wastewater disposal system (IWDS) or other wastewater treatment system (OWTS) is excluded from regulation under this Part 700 as this activity is regulated under the Wastewater Treatment and Disposal Rules and Regulations [NMIC, title 65, chapter 120].

(b) The disposal of wastewater through an injection well is excluded from regulation under this Part 700 as this activity is regulated under the CNMI Underground Injection Control (UIC) Regulations [NMIAC, title 65, chapter 90].

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

§ 65-130-705 Submission of Land Disposal Plans

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

- (a) The plan for the land disposal shall include the following items:
 - (1) Name and contact information of applicant;
 - (2) Description of the physical process that produces the wastewater, chemical make-up of wastewater, and average volume produced on a daily and annual basis;
 - (3) Map of disposal site which identifies elevation, nearby landmarks, and proposed point of discharge;
 - (4) Schematic of proposed land disposal method (e.g. percolation trench, ponding basin, leachfield, infiltrator) to be used;
 - (5) In the event that a land disposal plan requires seepage as a mechanism for the removal of fluids, the applicant must perform a percolation test on the proposed site and submit the results to the Administrator of BECQ.

- (b) The applicant must pay a \$500 filing fee for all land disposal plans that are submitted to the BECQ for review.
 - (1) This fee will be waived for projects that have applied for a CWA § 401 water quality certification.
 - (2) All government agencies shall be exempt from paying this fee.

Modified, 1 CMC § 3806(g).

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

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

§ 65-130-710 Land Disposal in Coastal Lands

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

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

In order for BECQ to determine whether an area proposed for land disposal of wastewater subject to this Part 700 is located within a primary, secondary, or brackish groundwater

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

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

- (a)(1) Primary groundwater recharge zones are defined as:
- (i) Areas designated as class I groundwater management zones in the CNMI Well Drilling and Well Operations Regulations [NMIAC, title 65, chapter 140];
 - (ii) Areas contributing surface infiltration to a geologic formation that is saturated with fresh ground water that is not in contact with seawater (i.e. “perched” groundwater) and is capable of transmitting quantities of fresh water in sufficient quantity to sustain a public water supply well;
 - (iii) Areas that can reasonably be considered, on the basis of maps provided by USGS or CUC, to be within active or future public water supply well fields;
 - (iv) Areas contributing surface infiltration to a geologic formation that discharges to a known spring or stream that currently is or is capable of transmitting quantities of fresh water in sufficient quantity to be used as a public water supply;
 - (v) Within four hundred feet laterally upgradient from a public water supply well; or
 - (vi) Within two hundred feet laterally downgradient from a public water supply well.
- (2) Areas which do not meet any of the criteria for definition as a primary groundwater recharge zone as described in subsection (a)(1) shall be classified as either a secondary groundwater recharge zone, or a brackish groundwater recharge zone.
- (b) Secondary groundwater recharge zones are defined as areas designated as class II groundwater management zones by the CNMI Well Drilling and Well Operations Regulations [NMIAC, title 65, chapter 140]; areas contributing surface infiltration to a geologic formation that is saturated with groundwater with less than 500 parts per million total dissolved solids, and currently are capable of transmitting quantities of water in sufficient quantity to sustain a public water supply well; or areas with groundwater surface elevations equal to or greater than 1 foot as mapped by USGS.
- (c) Brackish groundwater recharge zones are defined as areas designated as class III groundwater management zones by the CNMI Well Drilling and Well Operations Regulations [NMIAC, title 65, chapter 140]; areas contributing surface infiltration to a geologic formation that is saturated with brackish groundwater with greater than 500 part per million total dissolved solids; or areas with groundwater surface elevations less than 1 foot as mapped by USGS.

Modified, 1 CMC § 3806(g).

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

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

- (a) Discharge limitations for wastewater intended to be land disposed in groundwater recharge areas are dependent on the subcategory of groundwater recharge area and volume of wastewater to be disposed.
- (b) Wastewater that is to be land disposed in primary groundwater recharge zones must meet drinking water standards as set in CNMI Drinking Water Regulations [NMIAC, title 65, chapter 20].
- (c) Discharge limitations for water quality to be land disposed in secondary groundwater recharge zones and brackish groundwater recharge zones are dependent on volume of wastewater. Specific criteria for discharge limitations will be determined on a case-by-case basis and authorized in the permit.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

Part 800 - Prohibitions

§ 65-130-801 Prohibitions

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014).

Part 900 - Inspections and Right of Entry

§ 65-130-901 Inspections and Right of Entry

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004).

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

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

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

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 15 Com. Reg. 11015 (Oct. 15, 1993); Proposed 15 Com. Reg. 10833 (Sept. 15, 1993); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Proposed 13 Com. Reg. 7955 (Sept. 15, 1991); Adopted 8 Com. Reg. 4733 (Nov. 17, 1986); Proposed 8 Com. Reg. 4458 (Aug. 15, 1986); Adopted 5 Com. Reg. 1938 (Mar. 31, 1983); Proposed 5 Com. Reg. 1869 (Feb. 28, 1983).

§ 65-130-1005 Grounds for Enforcement Actions

In accordance with 2 CMC § 3131, if the Administrator has reason to believe a violation of the provisions of the Environmental Protection Act, 2 CMC §§ 3101 et seq., the standards in this chapter, and/or the terms of any approval issued pursuant to the Act and these standards, has occurred or is occurring, the Administrator may issue any necessary order to enforce the aforementioned provisions and conditions..

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

§ 65-130-1008 Enforcement Notice

The Administrator may, upon a determination that grounds for enforcement action exist under § 65-130-1005, issue an enforcement notice. The Administrator may extend the time for compliance at the Administrator's discretion. If public health and/or safety is threatened, immediate corrective action may be required. Such enforcement notice shall be in the form of a written warning, notice of violation, or cease and desist order signed by the Administrator or his authorized representative and shall provide notice of the facts constituting the violation, penalties that may be imposed, and, where appropriate, provide a reasonable time frame in which to take corrective action.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021).

§ 65-130-1010 Administrative Orders

(a) If any person subject to an enforcement notice issued pursuant to § 65-130-1008 fails to comply with the notice, the Administrator may issue an administrative order or other

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

such order imposing penalties as provided by 2 CMC § 3131(c). The order shall state the facts constituting the violation, the particular sections of the Act, standards, or approval involved, the proposed penalty including any proposed suspension, revocation, or modification of any approval, and monetary penalties including any penalty for cost of corrective action taken by the Division, and the opportunity to request a hearing. Such order shall be personally served or served by certified mail, return receipt on persons subject to the penalties in the order.

(b) An administrative order shall be delivered by BECQ staff in person or served by certified U.S. mail. The order must be delivered or served to the offending person or such person's designated agent.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

§ 65-130-1015 Hearings

(a) Any person subject to an order imposing penalties pursuant to § 65-130-1010 may request a hearing before the Administrator or his/her designee. Request for a hearing shall be served upon the Administrator in writing within seven calendar days from receipt of the order. The request for hearing shall include a written statement of such person's arguments and defenses. Failure to request a hearing within seven calendar days shall constitute a waiver of the right to a hearing and the Division may take the necessary action to enforce the order.

(b) When an enforcement hearing is timely requested, the Administrator shall schedule a hearing to occur within 45 days of receipt of the request. The Administrator or the Administrator's designee shall preside at the enforcement hearing, shall control the taking of testimony and evidence, and shall cause to be made an audio recording or stenographic record of the enforcement hearing. Evidence presented at such hearing need not conform with any prescribed rules of evidence but may be limited by the Administrator in any manner the Administrator reasonably determines to be just and efficient and promote the ends of justice. Procedures for hearing shall be conducted in accordance with the Administrative Procedure Act (APA), 1 CMC §§ 9101, et seq. The Administrator shall issue a decision within 15 days of the close of the enforcement hearing and all orders shall be in writing and accompanied by written findings of fact and conclusions of law. The standard of proof for the hearing shall be by the preponderance of the evidence. The decision of the Administrator shall be final as within BECQ. Appeal from an enforcement decision shall be to the Commonwealth Superior Court within 30 days following service of the Administrator's decision.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 14908 (Jan. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996).

§ 65-130-1020 Emergency Suspension Provisions

If the Administrator determines that a violation of an approval issued pursuant to the Environmental Protection Act, 2 CMC §§ 3101 et seq., and the standards in this chapter has resulted in an imminent threat to public health, safety or welfare, the Administrator may summarily suspend the approval, notwithstanding any notice requirement, pending proceedings for revocation or other action. A hearing for revocation or other action shall be promptly instituted and determined pursuant to the procedures in § 65-130-1015.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004).

§ 65-130-1025 Criminal Penalties

Any person who knowingly and willfully commits any act in violation of the Environmental Protection Act, 2 CMC §§ 3101 et seq., these standards, or any approval issued pursuant to the Environmental Protection Act, 2 CMC §§ 3101 et seq. and these standards, may be subject to criminal penalties as set forth in 2 CMC § 3131(d). If the Administrator has reason to believe that a person may subject to criminal penalties, the Administrator shall promptly submit a report of the violation to the Attorney General.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar, 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004).

§ 65-130-1030 Determination of Penalties

The Administrator shall, in the Administrator's sound discretion, set penalties in an amount calculated to compel compliance, and shall consider the value of the existing and potential damage to the environment proximately caused by such violation. The Administrator may also order the offending party to cease and desist from the activity in violation, take mitigating measures to cure the violation, or seek any other remedy available in law or equity.

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021).

§ 65-130-1035 Enforcement by Commonwealth Superior Court

Penalties, suspensions, and other enforcement action taken by the Administrator hereunder constitute official agency orders and must be complied with by the person(s) determined to be in violation. In the event that penalties are imposed or suspension or other enforcement action is issued, and compliance with either is refused, the Administrator may file in Commonwealth Superior Court seeking court enforcement.

History: Amdts Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Amdts Proposed 43 Com. Reg. 46895 (June 28, 2021).

Part 1100 - Miscellaneous Provisions

§ 65-130-1101 Severability

If any provision of these regulations or their application is held to be invalid, such invalidity shall not affect any other provision or application that can be used without the invalid section, and to this end the provisions of these regulations and their various applications are declared to be severable.

Modified, 1 CMC § 3806(d), (f).

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

Appendix 1

[Repealed]

History: Adopted 43 Com. Reg. 47558 (Sept. 28, 2021); Proposed 43 Com. Reg. 46895 (June 28, 2021); Adopted 36 Com. Reg. 34956 (May 28, 2014); Proposed 36 Com. Reg. 34847 (Mar. 28, 2014); Adopted 26 Com. Reg. 22896 (Sept. 24, 2004); Proposed 26 Com. Reg. 22237 (Apr. 23, 2004); Adopted 19 Com. Reg. 15554 (Aug. 15, 1997); Proposed 18 Com. Reg. 14388 (Oct. 15, 1996); Adopted 13 Com. Reg. 8309 (Nov. 15, 1991); Amdts Proposed 13 Com. Reg. 7955 (Sept. 15, 1991).