

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

CHAPTER 65-130

WATER QUALITY STANDARDS

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

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

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

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adopted prior to the effective date of this Executive Order shall continue to be effective until revised, amended, repealed or terminated.”

Part 001 - General Provisions

§ 65-130-001 Authority

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

Modified, 1 CMC § 3806(d).

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

§ 65-130-305 Verification by Monitoring

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

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

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

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

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

Part 400 - Specific Water Quality Criteria

§ 65-130-401 Microbiological Requirements

- (a)

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Microbiological Requirements	Applicable to:
<p>(1) Fecal Coliform The fecal coliform concentration shall not exceed a geometric mean of 200 CFUs per one hundred milliliter based on samples taken in any 30 day interval nor shall any single sample exceed 400 CFUs per one hundred milliliter at any time.</p>	<p>All Waters</p>
<p>(12) Enterococci The Enterococci concentration shall not exceed a geometric mean of 35 per 100 mL based on samples taken in any 30 day interval. No single sample result shall exceed 130 Enterococci per 100 mL.</p>	<p>All Waters</p>
<p>(23) <i>E. coli</i> The <i>E. coli</i> concentration shall not exceed a geometric mean of 126 per 100 mL based on samples taken in any 30 day interval. The Statistical Threshold Value is 410 <i>E. coli</i> per 100 ml.</p>	<p>All Fresh Waters</p>

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

Modified, 1 CMC § 3806(f), (g).

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

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

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

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

Microbiological Requirements

Applicable to:

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

Modified, 1 CMC § 3806(f).

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

§ 65-130-450 Toxic Pollutants

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

(b) Criteria for toxic pollutants are given as either a numeric criteria or for mixtures of pollutants with no recommended criteria, are determined by multiplying an appropriate application factor by the concentration determined to be lethal to 50% of the most sensitive indigenous organism after 96 hours of exposure (96 LC 50). The 96 LC 50 values shall be determined by using bioassay procedures consistent with those described in the latest edition of Standard Methods for the Examination of Water and Wastewater (for ordering information, contact the American Public Health Association, 1015 Fifteenth Street, NW, Washington, D.C. 20005-2605, or go to <http://www.apha.org> to order on-line).

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

(d) 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 (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 and/or saltwater, whichever is appropriate. human health numeric criteria for the toxic pollutants included in the CWA § 307(a) list of priority pollutants are incorporated by reference into the CNMI Water Quality Standards (National Recommended Water Quality Criteria: 2013, (EPA 2013) available at

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~~<http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm> or the most recent version~~

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

(2) Chronic Toxicity Standards: No pollutant in A all Commonwealth or state waters shall ~~be free from pollutants in~~ exceed concentrations ~~over which on average during any 24-hour period exceed a four-day average of~~ the chronic standards listed in the National Recommended Water Quality Criteria ~~respectively~~ for fresh and marine waters more than once in three years. ~~(EPA 2013).~~

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

Pollutant _____	<u>Fresh Water</u>		<u>Marine Water</u>	
	Acute	Chronic _____	Acute	Chronic
Chlorine (µg/L) _____	19	11 _____	13	7.5

~~(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>.~~

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

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

~~(hg) 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).~~

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

Modified, 1 CMC § 3806(d), (f), (g).

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

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

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

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

§ 65-130-455 General Considerations

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

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

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