

CHAPTER 65-30

EARTHMOVING AND EROSION CONTROL REGULATIONS

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Chapter History: Amdts Adopted 36 Com. Reg. 35402 (Aug. 28, 2014); Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

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

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

Section 304. Department of Public Works.

...

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

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

PL 11-108 (effective Dec. 3, 1999) repealed Executive Order 94-3 § 304(d) in its entirety.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

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

### Part 001 - General Provisions

#### § 65-30-001 Authority

The rules and regulations in this chapter have been promulgated by the Division of Environmental Quality in accordance with the Commonwealth Environmental Protection Act, 2 CMC §§ 3101 to 3134 (Public Law 3-23, as amended), of the Commonwealth of the Northern Mariana Islands. These rules, regulations, technical provisions, and specifications, to be adopted by the Division of Environmental Quality as necessary, shall have the force and effect of law and shall be binding on all persons and other legal

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entities subject to the jurisdiction of the Commonwealth of the Northern Mariana Islands Division of Environmental Quality.

Modified, 1 CMC § 3806(d), (g).

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The Commission inserted commas between “Act” and “2” and after “(Public Law 3-23).”

The 1986 and 1993 regulations readopted and republished the Earthmoving and Erosion Control Regulations in their entirety. The Commission, therefore, cites the 1986 and 1993 regulations in the history sections throughout this chapter.

### **§ 65-30-005 Purpose**

(a) The purpose of the regulations and technical provisions in this chapter is to establish certain minimum standards and requirements as determined by the Division to be necessary for control of nonpoint source runoff from human-related activities. Specifically, these regulations are designed to:

- (1) Protect marine and fresh water quality;
- (2) Maintain and enhance beneficial uses of marine and fresh waters;
- (3) Promote public awareness of the importance of protecting the CNMI’s marine and fresh water resources from siltation, and bacteriological, and chemical contamination; and
- (4) Protect public health by protecting and enhancing the quality of marine and fresh water recreational and traditional fishing sites.

(b) As with all of the Division of Environmental Quality regulations, the design standards and details described in the regulations in this chapter and in the permitting processes are for minimum standards necessary to protect public health and the environment. The ultimate responsibility of the project lies with the applicant, the Division assumes no responsibility for design failures of systems reviewed by the Division. Each design must be designed for the specific site location.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: This section was originally part of former part 1, codified at § 65-30-001. The 1993 amendments moved the provision to a separate section and added new subsections (a) through (e). The 2014 amendments redesignated the subsections as (a)(1) through (a)(4) and (b).

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### § 65-30-010 Definitions

- (a) “Abutting property” means any property which shares a common boundary, or one which lies directly across a public right of way, from the subject property.
- (b) “Act” means the Commonwealth Environmental Protection Act, 2 CMC §§ 3101 to 3134 (Public Law 3-23, as amended), of the Commonwealth of the Northern Mariana Islands.
- (c) “Beneficial use” shall include the use of water reasonably required for domestic, agriculture, commercial, industrial, recreational, and other purposes, on both public and private lands.
- (d) “Building” means a structure having a roof and intended to shelter people, animals, property, or business activity, or any structure used or intended to be used for supporting or sheltering any use or occupancy.
- (e) “Clearing of vegetation” means total or partial removal of naturally occurring vegetation on an area of land, by mechanical or non-mechanical means, if it may potentially result in soil erosion.
- (f) “CNMI” means the Commonwealth of the Northern Mariana Islands.
- (g) “Contamination” means the introduction of any physical, chemical, biological, or radiological substance into surface water which has the potential to pose a threat to human health or the environment, or to impede the most beneficial use of water.
- (h) “CUC” means the Commonwealth Utilities Corporation, a public authority currently providing currently treatment for domestic and industrial wastewater.
- (i) “Director” means the Director of the Division of Environmental Quality or the Director’s duly authorized representative unless otherwise specified.
- (j) “Division” or “DEQ” means the Division of Environmental Quality unless otherwise specified.
- (k) “Duplex” means a building which two single family dwelling units are attached to each other and which are detached from any other dwelling or commercial building.
- (l) “Earthmoving activity” means any construction or other activity which disturbs or alters the surface of the land, a coral reef, or bottom of a lagoon, or ocean floor, including but not limited to clearing of vegetation, excavations, dredging, embankments, land reclamation in a lagoon, land development, subdivision development, mineral extraction, ocean disposal and the moving, depositing or storing of soil, rock, coral or earth; or sand mining.

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- (m) “Erosion control specialist” or “Specialist” means any person certified as such by the Division following the requirements given in § 65-30-345.
- (n) “Fill” means any rock, soil, gravel, sand, or other material deposited by man.
- (o) “Grading” means cutting through, altering, or otherwise disturbing the layers of the soil mantle so as to change the topography of the existing landform.
- (p) “IWDS” means individual wastewater disposal system. See the CNMI’s IWDS Regulations [NMIAC, title 65, chapter 120].
- (q) “NPDES” means national pollutant discharge elimination system under the federal Clean Water Act, 33 U.S.C. § 1251 et seq. A federal NPDES permit is required for all municipal and industrial waste and waste treatment plant discharges to the waters of the Commonwealth and certain industrial facilities and construction projects depending on type and size.
- (r) “Permit” as used in the regulations in this chapter shall mean an earthmoving and erosion control permit.
- (s) “Person” means any individual; firm; partnership; association; corporation — both public and private — and any entity or agency of the Commonwealth government or the United States of America.
- (t) “Sand mining” means the taking of any rock, sand, gravel, or other material from any site, including but not limited to all areas from the landward vegetation line to the seaward outer slope of the barrier or fringing reef.
- (u) “Single family dwelling” means a building designed exclusively for the occupancy of one family which is detached from any other dwelling or commercial building.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments added former subsections (a), (b), (c), (d), (f), (g), (k), (l), (p), (q), (r), (w), (x), (y), (z), (aa), (bb), (dd), (ff), (gg), (hh), (ii) and (jj), deleted former subsection (l) and renumbered the remaining provisions accordingly. The 1993 amendments also amended former subsections (h), (j), (m), (n), (o), (s), (cc) and (ee). The 2014 amendments added new subsection (m) and removed former subsections (a), (d), (e), (h), (m), (p), (r), (u), (w), (y), (z), (dd), (gg), (hh), (ii), and (jj).

### § 65-30-015 General Provisions

Construction and maintenance of any landfills; excavations, cuts, grading, clearing of vegetation, and revegetation of cleared areas; and all other earthmoving activities or

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activities that may cause erosion of soils shall be in compliance with the terms of the regulations in this chapter. Permits shall be required as provided in this chapter and such permits shall be granted or denied in conformity with the provisions of the regulations in this chapter. Regardless of the requirement for a permit, all activities shall be conducted in a manner that minimizes erosion.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments moved this section from former section 2.1, entitled “Compliance.” See 8 Com. Reg. at 4588 (Sept. 15, 1986); 6 Com. Reg. at 2726 (Apr. 15, 1984). The 1993 amendments moved former § 2.2, entitled “Interpretation and Severability,” to § 65-30-801 and moved § 2.3, entitled “Permit Surrender,” to § 65-30-110.

### **Part 100 - Permit System**

#### **§ 65-30-101 Permits Required**

(a) No earthmoving or landclearing activity shall take place unless clearance has been obtained from the CNMI Historic Preservation Office in accordance with applicable law. Until this clearance has been obtained no person shall commence or continue any earthmoving activity including grading, excavating, filling, or clearing of vegetation, and no activity shall take place without having first obtained a permit in accordance with the regulations in this chapter. Approvals from other agencies (e.g. Zoning Office, Coastal Resources Management Office, and Department of Lands and Natural Resources, Division of Fish and Wildlife) may also be required prior to issuing a permit.

(b) All permits shall expire in one year unless otherwise specified in the permit. Permits may not be granted for longer than a two year period. Extensions may be granted thirty days prior to a permit’s expiration. Through permit renewal requests, a permit may never be active for a period longer than three years.

Modified, 1 CMC § 3806(d), (e).

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

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

The 1993 amendments added new subsection (b), moved parts of former subsection (b) to § 65-30-105(c) and amended subsection (a). The Commission inserted a comma after the word “filling” in subsection (a) pursuant to 1 CMC § 3806(g).

**§ 65-30-105 Permit Procedure**

(a) General Requirements

(1) No person shall commence or continue any of the following: grading, filling, or clearing of vegetation without first obtaining a permit from DEQ, except that:

(i) Permits are not required for projects of less than one hundred square meters and a grade less than three percent slope. DEQ may, however, require persons to submit erosion control plans for review and approval on a case by case basis depending on the specific project's potential environmental impacts; and

(ii) Permits are not required for projects for the construction of individual wastewater disposal systems, where the project has been permitted by the Director of DEQ. This applies only to the construction of the individual wastewater disposal systems portion of the project.

(2) Signatory Requirements

(i) Applications. All permit applications shall be signed as follows:

(A) For corporations: by a responsible corporate officer. For the purposes of this section, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation.

(B) For a partnership or sole proprietorship: by a general partner or proprietor; or

(C) For any permittee, an authorized representative may sign the permit, if a responsible corporate officer, general partner, proprietor, or individual has provided DEQ with a signed, written delegation of authority, specifically delegating his authority to the authorized representative and acknowledging that the authorized representative is acting on his behalf.

(ii) Reports. All reports required by the terms of a permit and other information requested by the Director of DEQ shall be signed by a person described in subsection (a)(2)(i) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(A) The authorization is made in writing by a person described in subsection (a)(2)(i) of this section;

(B) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

(C) The written authorization is submitted to the Director of DEQ.

(iii) Changes to authorization. If an authorization under subsection (a)(2)(ii) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (a)(2)(ii) of this section must be submitted to the Director of DEQ prior to or together with any reports, information, or applications to be signed by an authorized representative.

(iv) Certification. Any person signing a document under subsections (a)(2)(i) or (a)(2)(ii) of this section shall make the following certification:

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This application and the attachments constitute my “One Start” Permit Application Package and Fee for review, as required by the DEQ Earthmoving Regulations. I agree to conduct the proposed earthmoving in accordance with the law and regulation that governs the CNMI and to comply with any conditions that may be specified in the permit issued by the Division of Environmental Quality. I also understand that any knowing and willful false statement, representation, or answer on this application may be considered grounds for permit denial and/or a civil or criminal penalty not to exceed \$50,000.00 or one (1) year imprisonment or both.

(b) Application Form and Erosion and Sediment Control Plan for Permits for Commercial Use

Applicants for a permit shall submit an application to DEQ upon a form prescribed by DEQ in duplicate. Applicants for a permit shall furnish to DEQ an informational report, as described in this section, prepared by individuals qualified by training and experience to have knowledge of the subject. DEQ shall determine the adequacy of the report and may require the submission of additional information where necessary. The report shall provide the following information, except to the extent that DEQ determines that such information is not applicable to the project:

(1) A temporary erosion and sediment control plan in conformity with the following requirements;

(i) The plan shall be prepared and certified by a qualified registered professional engineer with seal and signature as specified in NMIAC § 125-20.1-705 of the Regulations of the Board of Professional Licensing for Engineers, Architects, Land Surveyors, and Landscape Architects;

(ii) The details of calculations and reference sources of information must be provided;

(iii) Plans must be based on the 25 year 24 hour duration storm event;

(iv) Conveyance structures must be based on the 25 year 24 hour storm event peak discharge;

(v) Sediment control structures (e.g. ponding basins, sediment basins/traps) must be designed for the 25 year 24 hour storm event. Designs may be based on either:

(A) Minimum of 24 hour detention time including sediment storage volume; or

(B) Sediment removal rate of not less than 75%;

(vi) A map clearly depicting the land capabilities of the property on which the grading is to be performed, including the applicable soil name, soil group, hydrologic group, slope, runoff potential, soil depth, erosion potential, and natural drainage;

(vii) A map clearly depicting accurate contours at two foot intervals showing the topography of the ground to be cleared, graded, or filled. The map shall extend beyond the site to be developed far enough so that any impact of erosion from the site and its deposition on adjacent properties may be assessed;

(viii) A subsurface soil and geological report including subsurface investigations, if such report is required by the Director. The report shall be done pursuant to part 200 of these regulations;

(ix) An accurate plot plan showing the exterior boundaries of the property on which the grading is to be performed. This plot plan shall include a grading plan prepared in accordance with engineering and planning practices, applicable codes and restrictions imposed by the recommendations of the subsurface soil and geological report;



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- (x) Elevations and dimensions, including quantity, location, and extent of proposed grading;
- (xi) Location, construction, and maintenance of sediment retention structures and equipment.
- (xii) A site plan, which shall specify:
  - (A) The type, dimensions, and location of all sediment retention or stormwater management structures and equipment;
  - (B) The construction sequence of erosion control structures coordinated with the increment development schedule; and
  - (C) A maintenance program for the control facilities during the construction phase. The plan shall include plans for the removal and disposal of materials from the control facilities on the project area.
- (xiii) A map and report showing existing tree locations, size (diameter and height), species, and the proposed extent and manner of tree cutting and vegetation clearing, including a plan for disposing of cut trees and vegetation and protection of vegetation remaining on site;
- (xiv) A description of equipment and methods to be employed in disposing of soil and other material that is removed from the grading site;
- (xv) A schedule showing when each stage of the project will be completed, and all clearing, grading, and stabilization operations shall be completed on a specified increment before moving on to the next specified increment. The schedule must detail the plan for eliminating erosion during the Commonwealth's rainy season (June through December);
- (xvi) All earthmoving activities shall cease during storms. Extra measures and precautions must be taken to eliminate erosion during these periods;
- (xvii) Extra measures and precautions must be taken to eliminate erosion during a three week period surrounding the annual coral spawning event (typically in June or July). The extra measures may include ceasing earthmoving activities in areas that are either highly erodible or near the coast. The actual date shall be determined by the Director;
- (xviii) A slope stabilization and re-vegetation plan, with the following features:
  - (A) The applicant shall submit a slope stabilization and re-vegetation plan which shall include a complete description of the existing vegetation, the vegetation to be removed and its disposal, the vegetation to be planted, erosion control and slope stabilization measures to be installed; and,
  - (B) The plan shall include an analysis of the environmental effects of such operations, including the effects on slope stability, soil erosion, water quality, and fish and wildlife;
- (xix) A copy of the approved erosion control plan must be kept at the project site;
- (xx) Inspection and maintenance plan for all erosion control measures. The plan shall include at a minimum:
  - (A) Weekly visual inspections of all physical erosion control measures;
  - (B) Inspection of all physical erosion control measures after each and every major rainfall event;
  - (C) Maintenance records for the physical erosion control measures; and
  - (D) Copies of all inspections and maintenance reports shall be kept on file at the project site.

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(xxi) The plan shall specify at least one erosion control specialist who will oversee the installation and daily implementation of the temporary erosion control plan. The designated erosion control specialist must be present during all site inspections when advance notice has been given;

(xxii) Any additional information requested by DEQ that may be relevant to the specific construction and maintenance activities identified in this subsection; and

(xxiii) All maps and site plan drawings prepared to comply with this subsection shall be prepared using a computer-based drawing tool such as Auto-CAD.

(2) A permanent storm water control plan for the project after the construction is complete. The plan must comply with subsection (b)(1) excluding subsection (b)(1)(xx).

(3) A long-term stormwater maintenance plan, describing the necessary inspection and maintenance procedures that shall be carried out by the owner of the building or structure throughout the lifetime of the building once earthmoving activity has ceased. This plan shall include:

(i) Detailed inspection procedures for the stormwater infrastructure;

(ii) The required frequency of inspection and maintenance; and

(iii) Procedures for ensuring that the infrastructure remains in working condition.

(4) Application Fee

A non-refundable application fee must accompany all applications prior to DEQ reviewing the application. The application fee shall be as follows:

| Project Area  | Fee         |
|---|-------------|
| Up to 1 hectare   | \$150.00    |
| Greater than 1 hectare      Less than or equal to 5 hectare     | \$450.00    |
| Greater than 5 hectare      Less than or equal to 15 hectare    | \$850.00    |
| Greater than 15 hectare      Less than or equal to 50 hectare   | \$3,000.00  |
| Greater than 50 hectare      Less than or equal to 100 hectare  | \$6,000.00  |
| Greater than 100 hectare      Less than or equal to 200 hectare | \$10,000.00 |
| Greater than 200 hectare  | \$15,000.00 |

(5) Proof of title or lease to the land authorizing applicant to conduct such activities.

(6) Applicant's signature on the application or a representative's signature. A representative's signature will only be accepted with a legal instrument granting the representative power to act for the applicant in such matters. The legal instrument will not preclude DEQ from taking action against either the representative or the applicant in the event of violations.

(7) Other assurances necessary to ensure that the applicant abides by the plans may be required on a case by case basis, where applicant has a prior history of noncompliance.

(8) Applicants for projects of one acre (0.404 hectares) or greater may be required to obtain an NPDES permit.

(9) Applicants must provide either proof of the ability to hook-up to CUC sewer system or a completed individual wastewater disposal system (IWDS) application.

(10) Applicant must provide proposed public safety measures (e.g. fencing and barricades) for the construction area.

(c) Non-commercial, Agricultural, and Exploratory Permits

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Projects of a non-commercial nature require a permit but and a reduced permit fee and generally require less information submitted as part of the application. All earthmoving activities not defined under this section shall be considered to be commercial earthmoving unless the Director determines otherwise based on information submitted by the applicant.

(1) Definition of a non-commercial, agricultural, or exploratory activity under this section:

(i) The work is an exploratory excavation under the direction of a soils engineer or geologist not to exceed an aggregate area of one hundred square meters;

(ii) The work is for field plowing or agricultural purposes;

(iii) The work is for the purpose of erecting a single family dwelling or a duplex;

(iv) The work is the clearing of vegetation for site inspection (i.e. transit survey or topographical survey limited to necessary area to conduct work) which does not exceed two thousand square meters in area and there is sufficient prevention of erosion, and the applicant can demonstrate to DEQ that there will be no adverse environmental impact to any surface water as a result of the earthmoving activity; or

(v) The work is by a public agency (but not by a contractor for a government agency).

(2) Application Form and Erosion and Sediment Control Plan for Permits for Non-commercial Use

Applicants for a permit shall submit an application to DEQ upon a form prescribed by DEQ in duplicate. Applicants for a permit shall furnish to DEQ the following information:

(i) A completed earthmoving and erosion control application;

(ii) Proof of title or lease to the land and authorization to conduct such activities;

(iii) An erosion and sediment control plan, which shall include the following information and feature;

(A) Temporary sediment control structures to prevent the discharge of sediment from the site during construction;

(B) A site development plan showing the locations of all proposed structures;

(C) All earthmoving activities shall cease during storms. Extra measures and precautions must be taken to eliminate erosion during these periods;

(D) Extra measures and precautions must be taken to eliminate erosion during a three week period surrounding the annual coral spawning event (typically in June or July). The extra measures may include ceasing earthmoving activities in areas that are either highly erodible or near the coast. The actual date shall be determined by the Director;

(E) A copy of the approved erosion control plan must be kept at the project site; and,

(F) Any additional information requested by DEQ, which may be relevant to the specific construction and maintenance activities identified in this subsection.

(iv) A map clearly depicting:

(A) An accurate plot plan showing the exterior boundaries of the property on which the grading is to be performed;

(B) Elevations and dimensions including quantity, location, and extent of proposed grading;

(C) Existing tree locations, size, species, and the proposed extent and manner of tree cutting and vegetation clearing; and,

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(D) Where cut and fills are planned, the applicant must address the impacts on the adjacent lots.

(3) Application Fee. A non-refundable application fee of \$25.00 must accompany non-commercial applications covered by this section prior to DEQ reviewing the application, except when the work is done by a public agency. In cases where the work is done by a public agency, the application fee shall be waived.

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

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The paragraphs of subsection (b)(1)(xii) were not designated. The Commission designated subsections (b)(1)(xii)(A) through (C).

The 1993 amendments deleted subsection (a)(1)(i) and added new subsections (a)(1)(iii) through (a)(1)(v), (a)(2), (b)(1)(ii) through (v), (b)(1)(xvi), (b)(1)(xvii), (b)(1)(xix) and (xx), (b)(2) through (b)(9) and (c). The 1993 amendments also moved subsections (c)(1)(i) through (c)(1)(v) from former section 4.1.1(a)-(f). See 8 Com. Reg. at 4590 (Sept. 15, 1986); 6 Com. Reg. at 2728 (Apr. 15, 1984). The 2014 amendments deleted former subsections (a)(1)(i), (a)(1)(ii), (a)(1)(v), (c)(2)(iv)(A), and (c)(2)(iv)(E), and added subsections (a)(2)(i)(C), (b)(1)(xxi) through (b)(1)(xxiii), (b)(3), (c)(2)(iii)(A) through (c)(2)(iii)(F), and (c)(3).

### **§ 65-30-110 Undue Procedural Requirements**

DEQ may take administrative action to relieve an applicant of undue procedural requirements by utilizing such devices as permit surrender and consolidated permit applications upon a finding that such actions will be in the best interest of the Commonwealth and will meet any applicable law standards or regulation in force.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments moved this section from former § 2.3. See 8 Com. Reg. at 4588 (Sept. 15, 1986); 6 Com. Reg. at 2726 (Apr. 15, 1984).

## **Part 200 - Required Investigations, Reports and Plans**

### **§ 65-30-201 General Requirements of Subsurface Investigations**

Subsurface soil and geological report shall be performed throughout the area to sufficiently describe the existing conditions.

History: Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986).

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17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

### § 65-30-205 Specific Requirements of Subsurface Investigations

(a) Subsurface investigation shall be conducted whether the use is commercial or noncommercial and a subsurface soil and geological report shall be prepared, where stability may be lessened by the proposed grading or filling or when such grading or filling will be performed at any of the following locations:

- (1) Zones of trapped water or high water table;
- (2) Where a fill slope is to be placed above a cut slope;
- (3) Where pile driving is to be conducted;
- (4) Proposed or existing fills exceeding twenty feet in height;
- (5) Proposed or existing cuts exceeding twenty feet in height, unless in extremely competent rock;
- (6) Where fills are to be placed on existing slopes steeper than sixteen percent;
- (7) Where excavation causes the slope to exceeds a one-to-one (45° or 100% slope).

(b) Where any of the particular problem areas listed above or other significant problems are found, the subsurface investigation shall be of sufficient scope and detailed to describe the problem thoroughly. The person making the report shall submit a written report of findings and recommendations.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

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

The 1986 amendments amended former subsection (g). The 1993 amendments amended the opening paragraph and former subsection (f), added former subsection (g) and redesignated former subsection (h) accordingly. The 2014 amendments redesignated former subsections (b) through (g) as subsections (a)(1) through (a)(7).

### § 65-30-210 Additional Investigations and Reports

When requested by DEQ, the applicant shall procure and furnish, at applicant's expense, additional engineering, geologic, and ownership reports, plans or surveys, and other material necessary to determine and evaluate site conditions and the effect of the proposed work on abutting properties public ways and public welfare and safety within the purposes of the regulations in this chapter.

Modified, 1 CMC § 3806(d).

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History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

### Part 300 - Standards of Grading, Filling and Clearing

#### § 65-30-301 Criteria for Grading, Filling, and Clearing Operations

(a) All grading, filling, and clearing operations, whether or not requiring a permit under the regulations in this chapter, shall be designed as follows:

- (1) To preserve, match, or blend with the natural contours and undulations of the land;
- (2) To retain trees and other native vegetation, to stabilize hillsides, retain moisture, reduce erosion, siltation and nutrient runoff and preserve the natural scenic beauty;
- (3) To minimize scars from cuts and fills;
- (4) To reduce the amount of cuts and fills and to round off sharp angles at the top, bottom (toe) and sides of all necessary cut and fill slopes;
- (5) To limit development on steep terrain;
- (6) To take into consideration geologic fragileness and adverse soil conditions and their effect on the future stability of the development;
- (7) To assure that all cleared slopes, cuts, and fills and other areas vulnerable to erosion shall be stabilized;
- (8) To assure that construction, clearing of vegetation, or disturbance of the soil will be limited to those areas of proven stability;
- (9) To assure that the natural geological erosion of hillsides, slopes, graded areas, cleared areas and filled areas, will not be exceeded; and
- (10) To assure that sediment or other material deposited in the marine waters or coastline, or any other public or private lands will not exceed that which would have been deposited if the land had been left in its natural state.

(b) All projects must meet the standards set forth in 2.1 and 2.2 of the 2006 CNMI and Guam Stormwater Management Manual, specifically E&SC Standards 1-11 and Post-construction Standards 1-13. The Manual is attached as Appendix 1. The remainder of the Manual provides guidance for complying with the standards. Temporary and permanent project construction shall reflect all of the applicable stormwater control standards as set forth in the standards referenced above.

Modified, 1 CMC § 3806(d), (g).

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments amended former subsection (d). The 2014 amendments added subsection (b). Appendix 1 was not attached to the original regulation.

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### § 65-30-305 Discharge Prohibitions

#### (a) Direct Discharge

No person shall discharge solid or liquid waste or materials including soil, silt, clay, sand, and other organic or earthen materials into the lagoon, ocean, or coastline, surface waters such as lakes, wetlands, streams or springs, or other people's property without a permit.

#### (b) Indirect Discharge

No material shall be placed near the coastline or ocean water, wetlands, streams, springs, or lakes in such a manner that it would be susceptible to erosion and/or deposition into said waters.

#### (c) Discharge Control Devices

In order to prevent such discharges from occurring, approved erosion and siltation control devices and measures shall be required for all grading and filling. Control devices and measures which may be required include, but are not limited to the following:

- (1) Energy absorbing devices to reduce the velocity of runoff waters;
- (2) Sedimentation controls such as desilting basins and catch basins;
- (3) Removal of trapped sediment to a site approved by DEQ;
- (4) Dissipation of water runoff from developed areas into drainage fields to dissipate the runoff into the subsoil;
- (5) Discharge of water runoff from developed areas into drainage fields to dissipate the runoff into the subsoil;
- (6) Multiple discharge points to reduce the volume of runoff over the localized discharge areas; and,
- (7) Physical erosion control devices.

#### (d) Temporary Control

Approved temporary erosion and sedimentation control devices, facilities, and measures shall be required during construction.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments amended subsection (a), the opening paragraph of subsection (c) and subsections (c)(3) through (c)(5).

### § 65-30-310 Dust Control

Whenever the ground cover is removed or disturbed or whenever fill material is placed on the site, the exposed surface shall be treated to the extent necessary to eliminate dust arising from the exposed material.

History: Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986).

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17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

### **§ 65-30-315 Prohibition of Grading During Inclement Weather and the Annual Coral Spawning Event**

Grading, filling, clearing of vegetation, or other disturbance of soil are prohibited during inclement weather and for resulting period of time when the site is in a saturated, muddy, or unstable condition. Whenever practicable, major earthmoving should be scheduled to coincide with the dry season. All earthmoving activities shall cease during storms and during a three week period surrounding the annual coral spawning event. Extra measures and precautions must be taken to eliminate erosion during these periods.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

### **§ 65-30-320 Schedule of Operations**

All grading and filling operations shall proceed according to a work schedule included in the grading plan. The schedule shall be prepared to provide for the shortest possible period of time that exposed soil is unprotected.

History: Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

### **§ 65-30-325 Disposal of Cleared Vegetation**

Vegetation removed during clearing operations shall be disposed of by stockpiling it on the site for use as mulch or compost, or shall be disposed of in a manner and at a location approved by the DEQ.

History: Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

### **§ 65-30-330 Disposal of Removed Earthen Materials**

Earthen materials removed during operations hereunder shall be disposed of as follows:

- (a) By stockpiling all or some of the top soil on the site for use on areas to be re-vegetated; or
- (b) By disposal of the material at a location approved by the DEQ.



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History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

### **§ 65-30-335 Cuts**

#### (a) Maximum Slope

The maximum cut slope shall be determined on the basis of the risk of soil instability or soil erodibility as shown by the information report, the subsurface soil and geological report or other available information.

#### (b) Slope Materials

If the material of the slope is of such composition and character as to be unstable under the maximum moisture content anticipated, DEQ shall require such measures as necessary in order to insure the stability of the slope.

#### (c) Mechanical Stabilization

Where mechanical stabilization or containment of the slope by the use of non-native material is employed, the stabilization devices shall be at least partially screened by vegetation.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments amended subsection (b). The 2014 amendments amended subsection (c).

### **§ 65-30-340 Fill**

#### (a) Maximum Slope

The maximum fill slope shall be determined on the basis of the risk of instability or soil erodibility as shown by the information report, the subsurface soil and geological report or other available information.

#### (b) Fill Material

Any material not subject to proper compaction or not conducive to stability shall not be permitted in fills.

#### (c) Compaction

Each layer of material for fill shall be compacted to relative compaction of not less than ninety percent ASTM–D1557-70 as certified by the applicant to DEQ. Fills and backfills must be compacted at a minimum of every ten inch horizontal layer to ensure that the total fill is compacted to the above referenced ninety percent.

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History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments amended subsections (b) and (c).

### **§ 65-50-345 Certification of Erosion Control Specialists**

#### (a) General Provisions

- (1) The purpose of this subsection is to assure that all earthmoving activities are performed under the supervision of individuals who are trained and certified with the knowledge and understanding of the erosion control standards.
- (2) No later than July 1, 2014, all earthmoving activity shall have a certified erosion control specialist to oversee the implementation of any erosion and sediment control plan.
- (3) The Division may charge reasonable fees to cover the expenses of the certification program. These fees may include an initial application fee for new applicants, an exam fee if an exam is to be administered, and a renewal fee for a specialist who is already certified. The Division shall provide a written schedule of current fees, published in the Commonwealth Register.

#### (b) Certification Requirements

- (1) A person seeking certification under this regulation shall submit an application to the Division on a form approved by the Division.
- (2) The Division will certify an applicant who has met the requirements of subsection (c).

#### (c) Examination Requirements

- (1) To be certified as an erosion control specialist, a person must pass the DEQ-administered “Erosion & Sediment Control Certification Exam” to demonstrate the person’s skills, knowledge, ability, and judgment in erosion control practices.
- (2) The person must obtain a minimum score of 70% on the exam in order to pass the examination.
- (3) A person may not take the same certification exam more than once within a span of 90 days.
- (4) The applicant must submit the fee for the exam prior to taking the exam.

#### (d) Certification Term and Renewal

- (1) A certificate issued under this section is valid for a three-year period beginning January 1 of the year of issuance.
- (2) The Division will renew a certificate only if a specialist:
  - (i) Has paid the required fee; and
  - (ii) Is otherwise in compliance with these regulations.

#### (e) Lapsed Certificates

- (1) A specialist who seeks renewal of a lapsed certificate shall submit a request for renewal within 90 days after the certificate lapses. Upon receipt of a valid request for

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renewal, including proof of compliance with subsection (d), and payment of the appropriate fee, the Division shall renew a certificate.

(2) The Division will require reexamination of a specialist whose renewal application is received more than 90 days after the certificate lapses.

(f) **Revocation of Environmental Specialist Certification**

(1) After an investigation and review of the facts, and in accordance with all applicable Commonwealth laws and regulations, the Director may revoke the certificate of a specialist for any of the following reasons:

(i) The specialist has practiced fraud and deception, has falsified reports to Division inspectors, or falsified other operating records. A person committing such actions may be liable for civil or criminal penalties in accordance with 2 CMC §§ 3131(c) and (d) or other applicable law;

(ii) The specialist does not use, in the judgment of the Director, reasonable care, judgment, or the application of knowledge in the performance of the specialist's duties. The Director's reasons for such a determination shall be stated in detail and in writing at the time of the revocation;

(iii) The specialist does not perform duties in a manner that meets earthmoving and erosion control compliance requirements of Commonwealth laws and regulations. The Director's reasons for such a determination shall be stated in detail and in writing at the time of revocation; or

(iv) The certification of the specialist has expired.

(2) If the Director revokes a certification for any reason other than certificate expiration, the specialist may appeal the Director's decision as set forth in § 65-30-515.

History: Amdts Adopted 36 Com. Reg. 35402 (Aug. 28, 2014) (see Commission Comment); Adopted 36 Com. Reg. 35007 (May 28, 2014); Proposed 36 Com. Reg. 34730 (Feb. 28, 2014).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The Commission corrected the capitalization of the words "erosion control specialist" pursuant to 1 CMC § 3806(f).

The August 28, 2014 Commonwealth Register contained the following document:

Wastewater, Earthmoving, and Erosion Control Interoffice Memorandum

To: All Members of the Public, Front Desk

From: DEQ Director

Date: 7-21-2014

Subject: Erosion Control Specialist Application Fees

To improve compliance and effectiveness of erosion control practices in the CNMI, the Bureau of Environmental and Coastal Quality, Division of Environmental Quality has adopted a requirement that every commercial earthmoving project designate an Erosion Control Specialist, as set forth in the Earthmoving and Erosion Control Regulations, NMIAC § 65-50-345. The fees are set forth below, in accordance with NMIAC § 65-345(d).

**Erosion Control Specialist Application Fee Schedule**

**Fee**

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|  |      |
|--|------|
| Erosion Control Specialist Initial Application and Examination | \$50 |
| Erosion Control Specialist Re-Examination                      | \$15 |
| Erosion Control Specialist Renewal                             | \$50 |

Pursuant to the APA, 1 CMC § 9105(b) and applicable regulations, this adopted Rule is effective 10 days after compliance with 1 CMC §§ 9102, 9105 and publication in the Commonwealth Register.

/s/  
David B. Rosario

36 Com. Reg. 35405 (Aug. 28, 2014).

### **Part 400 - Restriction of Vehicles to Graded Areas**

#### **§ 65-30-401 Restriction of Vehicles to Graded Areas**

(a) For the protection of plant material, construction equipment shall be limited to the actual areas to be graded as specified in the approved plans. No vehicles of any kind shall pass over areas to be left in their natural state according to the approved plans.

(b) The permittee, contractor, and subcontractor shall be fully responsible for compliance with the requirements of the regulations in this chapter, including any damage caused to existing trees or other vegetation.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

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

The 1993 amendments amended subsection (a).

### **Part 500 - Action on Applications**

#### **§ 65-30-501 Additional Information**

The Director may require the applicant to furnish additional information, plans, or specifications before acting on an application for any permit.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993).

#### **§ 65-30-505 Action on Permit Applications**

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Each application permit shall be reviewed for completeness. The Division shall review and act on any application for a permit within 21 calendar days of receipt of the complete application.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments moved this section from former § 4.2.1(b) and amended its provisions. See 8 Com. Reg. at 4591 (Sept. 15, 1986); 6 Com. Reg. at 2729 (Apr. 15, 1984).

### **§ 65-30-510 Incomplete Applications**

For all applications found to be incomplete, the Division will notify the applicant via a short written statement, describing the deficiencies found. Corrective and/or follow-up action, design, field tests, etc., is the responsibility of the applicant. The Division is not responsible, nor will Division personnel undertake, completion or correction of an incomplete or incorrect permit application. When the Division finds one or more deficiencies in the application, the Division will stop processing the permit, and the 21 calendar day permitting period will be put on hold, until such time that the applicant submits the information necessary to complete the application.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments moved this section from former § 4.2.1(c) and amended its provisions. See 8 Com. Reg. at 4591 (Sept. 15, 1986); 6 Com. Reg. at 2729 (Apr. 15, 1984).

### **§ 65-30-515 Appeal of Permit Decision**

The Director shall notify the applicant in writing of the decision regarding any application for permit. The Director shall inform the applicant of sufficient facts and reasons for a disapproval or limited approval of a complete application. The applicant shall be afforded the opportunity to file a written appeal of the Director's decision. A request for appeal shall be served upon the Division within seven calendar days from receipt of the disapproval or limited approval. Failure to file this appeal within seven calendar days shall constitute a waiver of the applicant's rights to any future appeal of the Director's decision. Appeals shall be heard in the same manner as hearings on administrative orders specified in § 65-30-710.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg.

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4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments moved this section from former § 4.2.1(d) and amended its provisions. See 8 Com. Reg. at 4591 (Sept. 15, 1986); 6 Com. Reg. at 2729 (Apr. 15, 1984). The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

### **§ 65-30-520      Transfer of Permits**

A permit issued pursuant to the regulations in this chapter shall not be transferred from one location to another, or from one person to another, without the written approval of the Director.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993).

### **§ 65-30-525      Amendment of Permits**

After a permit application has been approved, a permittee may alter the proposed project by requesting, in writing, an official application for a permit amendment. All relevant design drawings and plans must accompany the written request, and will be subject to approval by the Director or the Director's authorized representative. Each amendment application shall be processed within 21 days as specified in § 65-30-505, and for commercial permits, the applicant shall pay a fee of one-half of the original permit application fee.

History: Adopted 36 Com. Reg. 35007 (May 28, 2014); Proposed 36 Com. Reg. 34730 (Feb. 28, 2014).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The Commission corrected the capitalization of the words "commercial permits" pursuant to 1 CMC § 3806(f). The Commission struck the figure "50%" pursuant to 1 CMC § 3806(e).

## **Part 600 - Inspections and Right of Entry**

### **§ 65-30-601      Inspection Condition of Permit**

As a condition for the issuance and continuation of any permit granted under the regulations in this chapter, the holder of a permit shall allow the Director or the Director's authorized representative prompt access to the permitted site for the purpose of inspecting the premises for compliance with the terms of the permit. This shall include any work already completed under a permit pursuant to this section. The inspection may be made with or without advance notice to the permit holder, with good purpose, at the discretion of the Director, but shall be made at reasonable times unless an emergency dictates otherwise.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986).

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Commission Comment: The 1993 amendments moved this section from former § 10.5.1 and amended its provisions. See 8 Com. Reg. at 4599 (Sept. 15, 1986). The Commission created the section title.

### **§ 65-30-605 Searches Under Court Order or Warrant**

If the Director has probable cause to believe a violation of the regulations, any order issued under this chapter, or any term of a permit granted under this chapter has occurred or is imminent, or when necessary to allow the Director to perform the duties under this Act, the Director shall apply to the Superior Court of the Commonwealth of the Northern Mariana Islands for an order or warrant to enter and search any property, take necessary samples or readings therefrom, seize evidence found therein, and examine or impound any book or record found therein or specified in such order or warrant.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986).

Commission Comment: The 1993 amendments moved this section from former § 10.5.3. See 8 Com. Reg. at 4599 (Sept. 15, 1986). The Commission created the section title.

### **§ 65-30-610 Searches Without Court Order or Warrant**

The Director or the Director's authorized representative may enter upon any property for the purpose set forth in § 65-30-601 without an order or warrant if he/she has probable cause to believe all of the following:

- (a) That a violation described in the subsection has occurred or is imminent.
- (b) That the violation poses a serious, substantial, and immediate threat to the public health or welfare.
- (c) That the delay in obtaining a court order or warrant would prolong or increase the threat, or would prevent, hinder, or delay the discovery of evidence of the violation or the taking of any necessary mitigating or remedial measures.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986).

Commission Comment: The 1993 amendments moved this section from former § 10.5.4 and amended its provisions. See 8 Com. Reg. at 4599-4600 (Sept. 15, 1986). The Commission created the section title. The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

### **§ 65-30-615 Inspections at Reasonable Times**

All construction or work for which a permit is required shall be subject to DEQ inspection at reasonable times by authorized employees of the DEQ.

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History: Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments moved this section from former § 6.1 and amended its provisions. See 8 Com. Reg. at 4593 (Sept. 15, 1986); 6 Com. Reg. at 2731 (Apr. 15, 1984).

### **§ 65-30-620 General Inspections**

DEQ may make any inspections of any construction work deemed necessary, whether completed or ongoing, to ascertain compliance with the provisions of the regulations in this chapter or other regulations of the DEQ.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments moved this section from former § 6.2 and amended its provisions. See 8 Com. Reg. at 4593 (Sept. 15, 1986); 6 Com. Reg. at 2731 (Apr. 15, 1984).

### **§ 65-30-625 Notification**

The permittee or permittee's agent shall notify the DEQ at least two working days in advance of the start of the grading, filling, or clearing operation.

History: Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments moved this section from former § 6.3 and amended its provisions. See 8 Com. Reg. at 4593 (Sept. 15, 1986); 6 Com. Reg. at 2731 (Apr. 15, 1984).

### **§ 65-30-630 Inconsistent Conditions**

If the inspection reveals that the soil or other conditions are other than as stated in the application for permit, the Director may revoke the permit for violations and refuse to approve work until approval is obtained for an amended permit which will conform to the existing conditions. In such event, all work shall cease until an amended permit is obtained.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments moved this section from former § 6.4 and amended its provisions. See 8 Com. Reg. at 4594 (Sept. 15, 1986); 6 Com. Reg. at 2731 (Apr. 15, 1984).



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### **§ 65-30-635 Inspection of Concealed Work**

Whenever any work on which inspections are required by the regulations in this chapter is covered or concealed by additional work without first having been inspected, DEQ may require, by written notice, that such work be exposed for examination. All costs associated with exposing the concealed work shall be borne by the permittee or by the party responsible for conducting the earthmoving in the case where no permit is obtained. No costs relating to the concealed work shall be borne by DEQ.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments moved this section from former § 6.5 and amended its provisions. See 8 Com. Reg. at 4594 (Sept. 15, 1986); 6 Com. Reg. at 2732 (Apr. 15, 1984).

### **§ 65-30-640 Duty to Provide Information**

The permittee shall furnish to the Director of DEQ, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director of DEQ upon request, copies of records required to be kept by this permit.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993).

Commission Comment: The 1993 amendments deleted former part 9, entitled "Variances." See 8 Com. Reg. at 4597 (Sept. 15, 1986); 6 Com. Reg. at 2735 (Apr. 15, 1984).

## **Part 700 - Penalties, Fines, Suspension, Revocation, and Other Orders**

### **§ 65-30-701 Instituting Actions**

The Director may institute civil actions through the Commonwealth courts or by administrative orders issued by the Director.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993).

Commission Comment: The Commission created the section titles in part 700.

The 1993 amendments replaced former part 10 with the provisions in this part. The 1984 regulations originally adopted a part 10, entitled "Violation." See 6 Com. Reg. at 2735 (Apr. 15, 1984). The 1986 amendments adopted a revised part 10, entitled "Enforcement." See 8 Com. Reg. at 4597-4600 (Sept. 15, 1986).

**§ 65-30-705 Civil Actions in the Commonwealth Courts**

Civil actions initiated through the Commonwealth courts shall be transmitted through and with the approval of the Director and the Attorney General as necessary to enforce the regulations in this chapter in consonance with, and in accordance with the applicable laws of the CNMI. The Attorney General will institute legal actions to enjoin a violation, continuing violation or threatened violation of this chapter.

History: Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993).

**§ 65-30-710 Appeals of Administrative Orders**

Any person who is subject to civil penalties, revocation, or suspension pursuant this part may be served with an administrative order and notice of violation and may upon written request seek an appeal hearing before the Director or the Director's designee. Request for appeal may be served upon the Division within seven calendar days from receipt of the administrative order. Failure to request an appeal within seven calendar days shall result in the person's waiving the right to any appeal or hearing.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993).

**§ 65-30-715 Procedures for Administrative Orders**

Procedures for administrative orders shall be conducted as follows:

(a) The Director may issue and order any person to pay a civil fine as specified in the Commonwealth Environmental Protection Act, 2 CMC § 3131(c) for each violation of the Act, regulations adopted pursuant to the Act, or any permit or license issued pursuant to the Act and such regulations. Each day of continued violation after issuance of written notice by the Director or his designee and the expiration of any reasonable period allowed for corrective action is a separate offense. The Director shall determine whether to allow for a period for corrective action, and the length of that time period, based on the prior violations of these regulations and the nature of the current violation. The Director need not allow for a period for corrective action where previous violations of these regulations have occurred or where it is not practicable to correct the violation.

(b)(1) The written request for a hearing shall serve as the answer to the complaint. The request for hearing or "answer" shall clearly and directly admit, deny, or explain each of the factual allegations contained in the complaint with regard to which the alleged violator (respondent) has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state

- (i) The circumstances or arguments which are alleged to constitute the grounds of defense,
- (ii) The facts which respondent intends to place at issue, and

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(iii) Whether a hearing is requested.

(2) Failure to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegations. An oral answer may also be given at the time of hearing should a hearing be requested.

(c) The respondent may also request an informal settlement conference. An informal settlement conference shall not affect the respondent's obligation to file a timely request for hearing. If a settlement is reached the parties shall forward a proposed consent order for the approval of the Director.

(d) If a hearing is conducted, the Director or his designee will preside over the hearing. The Director shall control the taking of testimony and evidence and shall cause to be made an audio, audio-video, or stenographic record of the hearing. The type of record made shall be the discretion of the Director. Evidence presented at such a hearing need not conform with the prescribed rules of evidence, but may be limited by the Director in any manner she/he reasonably determines to be just and efficient and promote the ends of justice. The Director shall issue a written decision within thirty calendar days of the close of the enforcement hearing. The decision shall include written findings of fact and conclusions of law. The standard of proof for such a hearing and decisions shall be the preponderance of the evidence.

(e) The Director's decision shall be final. An appeal from the final enforcement decision shall be to the Commonwealth Superior Court within thirty calendar days following service of the final agency decision.

(f) For filing deadline purposes counting of the days shall start on the day after issuance or receipt (whichever is specified). If any filing date falls on a Saturday, Sunday, or Commonwealth holiday, the filing date shall be extended to the next working day.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993).

Commission Comment: The 2014 amendments deleted former subsection (e).

### **§ 65-30-720 Suspension, Revocation, or Modification**

The Director may suspend, revoke, or modify any permit or license issued by the Division for violation of the Act, any regulations adopted pursuant to the Act, any permit or license issued pursuant to the Act and such regulations. The Director's decision shall be subject to the procedures for the appeal of permit decisions.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993).

### **§ 65-30-725 Additional Penalties**

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A person shall be liable for an additional penalty for any amount expended by any agency of the Commonwealth in taking any action necessary to mitigate or reduce any significant adverse effect caused by the person's failure to comply with the Act, regulations, permit, license, or any order issued thereunder.

History: Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986).

Commission Comment: The 1993 amendments moved this section from former § 10.3.2 and amended its provisions. See 8 Com. Reg. at 4598 (Sept. 15, 1986).

### **§ 65-30-730      Knowing and Willful Violations**

Any person who knowingly and willfully commits any act in violation of the Act, regulations, permit, or license, and who is found guilty by a court of competent jurisdiction may be punished by a fine of not more than \$50,000.00 or by imprisonment for not more than one year, or both. Any other penalties or remedies provided by the regulations in this chapter and ordered by the Director shall also remain in effect.

History: Amdts Adopted 36 Com. Reg. 35007 (May 28, 2014); Amdts Proposed 36 Com. Reg. 34730 (Feb. 28, 2014); Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986).

Commission Comment: The 1993 amendments moved this section from former § 10.3.4 and amended its provisions. See 8 Com. Reg. at 4598 (Sept. 15, 1986).

## **Part 800 - Miscellaneous Provisions**

### **§ 65-30-801      Severability**

If any rule, section, sentence, clause, or phrase of the regulations in this chapter or its application to any person or circumstance or property is held to be unconstitutional or invalid, the remaining portions of this chapter or the application of this chapter to other persons or circumstances or property shall not be affected.

History: Amdts Adopted 15 Com. Reg. 11028 (Oct. 15, 1993); Amdts Proposed 15 Com. Reg. 10845 (Sept. 15, 1993); Amdts Proposed 15 Com. Reg. 10785 (Aug. 15, 1993); Amdts Adopted 8 Com. Reg. 4731 (Nov. 17, 1986); Amdts Proposed 8 Com. Reg. 4586 (Sept. 15, 1986); Adopted 6 Com. Reg. 2724 (Apr. 15, 1984); Proposed 6 Com. Reg. 2695 (Mar. 15, 1984); Proposed 5 Com. Reg. 2168 (June 30, 1983).

Commission Comment: The 1993 amendments moved this section from former § 2.2 and amended its provisions. See 8 Com. Reg. at 4588 (Sept. 15, 1986); 6 Com. Reg. at 2726 (Apr. 15, 1984).