

**TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY**

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**CHAPTER 65-90**

**UNDERGROUND INJECTION CONTROL REGULATIONS**

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

Chapter History: Amdts Adopted 7 Com. Reg. 3370 (Jan. 15, 1985); Amdts Proposed 6 Com. Reg. 3227 (Nov. 15, 1984); Amdts Proposed 6 Com. Reg. 3178 (Oct. 15, 1984); Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

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adopted prior to the effective date of this Executive Order shall continue to be effective until revised, amended, repealed or terminated.”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**

**§ 65-90-001 Authority and Scope**

The regulations in this chapter have been promulgated by the Department in accordance with Public Law 3-23 [2 CMC §§ 3101, et seq.] of the Commonwealth of the Northern

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Mariana Islands. The regulations in this chapter and technical provisions and specifications to be adopted by the Department from time to time shall have the force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of the Commonwealth of the Northern Mariana Islands.

Modified, 1 CMC § 3806(d).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

### **§ 65-90-005 Purpose**

The purpose of the regulations in this chapter is to establish requirements for any underground injection of hazardous wastes, of fluids used for extraction of minerals, oil, and energy and of certain other fluids with potential to contaminate ground water in order to protect underground sources of drinking water as required in the Federal Safe Drinking Water Act, Pub. L. No. 95-523, as amended by Pub. L. No. 95-190, 42 U.S.C. §§ 300f, et seq. The regulations in this chapter prohibit deep injection of wastes, injection of fluids with oil and gas mining, solution mining, injection of hazardous wastes, and other categories identified in this chapter. They allow all other types of injection to exist, subject to applicable regulations. These regulations do not apply to drinking water supply wells and water production wells or monitoring well drilling, development, and rehabilitation processes.

Modified, 1 CMC § 3806(d).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

Commission Comment: The Commission corrected the citation to the Federal Safe Drinking Water Act pursuant to 1 CMC § 3806(g).

### **§ 65-90-010 Definitions**

- (a) “Aquifer” means a geological “formation,” group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.
- (b) “Chief” means the Chief of the Division of Environmental Quality.
- (c) “Contaminant” means any physical, chemical, biological, or radiological substance or matter in water.
- (d) “Department” means the Department of Public Health and Environmental Services.
- (e) “Director” means the Director of Public Health and Environmental Services.
- (f) “Division” means the Division of Environmental Quality.
- (g) “Drilling mud” means a heavy suspension used in drilling an “injection well,” introduced down the drill pipe and through the drill bit.

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- (h) “Exempted aquifer” means an “aquifer” or its portion that meets the criteria in the definition of “underground source of drinking water” but which has been exempted according to the procedures in § 65-90-325.
- (i) “Facility or activity” means any “injection well,” or any other facility or activity (including land or appurtenances thereto) that is subject to this chapter.
- (j) “Fluid” means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.
- (k) “Formation” means a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth’s surface or traceable in the subsurface.
- (l) “Formation fluid” means “fluid” present in a “formation” under natural conditions as opposed to introduced fluids, such as “drilling mud.”
- (m) “Generator” means any person by site location, whose act or process produces “hazardous waste” identified or listed.
- (n) “Ground water” means water below the land surface in a zone of saturation.
- (o) “Hazardous waste” means a hazardous waste as defined in 40 CFR 261.3.
- (p) “Injection well” means a “well” into which “fluids” are being injected.
- (q) “Injection zone” means a geological “formation,” group of formations, or part of a formation receiving fluids through a “well.”
- (r) “Owner or operator” means the owner or operator of any “facility or activity” subject to this chapter.
- (s) “Pollutant” means any fluid that contains a contaminant, or dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged in water. It does not mean sewage from vessels.
- (t) “Plugging” means the act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.
- (u) “Radioactive waste” means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR part 20, appendix B, table II, column 2.

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(v) “Stratum” (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

(w) “Total dissolved solids” means the total dissolved (filterable) solid as determined by use of the method specified in 40 CFR part 136.

(x) “Underground injection” means a “well injection.”

(y) “Underground source of drinking water” (USDW) means an aquifer or its portion:

(1)(i) Which supplies any public water system; or

(ii) Which contains a sufficient quantity of ground water to supply a public water systems; and

(A) Currently supplies drinking water for human consumption; or

(B) Contains fewer than 10,000 mg/1 total dissolved solids; and

(2) Which is not an exempted aquifer.

(z) “Well” means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

(aa) “Well injection” means the subsurface emplacement of “fluids” through a bored, drilled, or driven “well”; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 7 Com. Reg. 3370 (Jan. 15, 1985); Amdts Proposed 6 Com. Reg. 3227 (Nov. 15, 1984); Amdts Proposed 6 Com. Reg. 3178 (Oct. 15, 1984); Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

Commission Comment: The 1985 amendments amended subsection (s).

With respect to the reference to the Department of Public Health and Environmental Services, see Executive Order 94-3 (effective August 23, 1994) reorganizing the Commonwealth government executive branch, changing agency names and official titles and effecting numerous other revisions.

In subsection (s), the Commission corrected the spelling of “cellar.”

### **Part 100 - Classification of Injection Wells**

#### **§ 65-90-101 Introduction**

Injection wells are classified as follows in this part.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

Commission Comment: This section was originally an introduction to part 100. The Commission created the section title. The Commission also changed the final colon to a period.

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### § 65-90-105 Class I

(a) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

(b) Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

Modified, 1 CMC § 3806(e).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

### § 65-90-110 Class II

Wells which inject fluids:

(a) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as hazardous waste at the time of injection.

(b) For enhanced recovery of oil or natural gas; and

(c) For storage of hydrocarbons which are liquid at standard temperature and pressure.

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

### § 65-90-115 Class III

Wells which inject for extraction of minerals including:

(a) Mining of sulfur by the Frasch process;

(b) In situ production of uranium or\* other metals. This category includes only in situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in class V.

\*So in original; probably should be "or."

(c) Solution mining of salt or potash.

Modified, 1 CMC § 3806(f).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

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### **§ 65-90-120 Class IV**

(a) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one quarter mile of the well contains an underground source of drinking water.

(b) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one quarter mile of the well contains an underground source of drinking water.

(c) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under § 65-90-105(a) or subsection (a) and (b) of this section (e.g., wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to § 65-90-325).

Modified, 1 CMC § 3806(c), (e).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

### **§ 65-90-125 Class V**

Injection wells not included in class I, II, III, or IV.

Modified, 1 CMC § 3806(f).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

## **Part 200 - Prohibited Activities**

### **§ 65-90-201 Injection of Fluids Prohibited Unless Authorized**

All injection of fluids through wells is prohibited except as authorized by this chapter.

Modified, 1 CMC § 3806(d).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

Commission Comment: The Commission created the section titles in part 200.

### **§ 65-90-205 Certain Classes of Injection Wells Prohibited**

No person shall construct, install, operate, or maintain any class I, II, III, or IV injection wells.

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Modified, 1 CMC § 3806(f).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

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

### **§ 65-90-210 Protection of Drinking Water**

Owners and operators of class V wells are prohibited from causing or allowing movement of fluid, by injection or otherwise, containing any contaminant into underground sources of drinking water where presence of that contaminant may cause a violation of the CNMI Drinking Water Regulations [NMIAC, title 65, chapter 20], or which in the opinion of the Department may adversely affect the health of persons.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 7 Com. Reg. 3370 (Jan. 15, 1985); Amdts Proposed 6 Com. Reg. 3227 (Nov. 15, 1984); Amdts Proposed 6 Com. Reg. 3178 (Oct. 15, 1984); Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

Commission Comment: The Commission changed “regulation” to “regulations” to correct a manifest error.

### **Part 300 - Permitted Activities**

### **§ 65-90-301 Compliance with All Applicable Laws**

The regulations in this chapter do not prohibit the construction, installation, operation or maintenance of any type of injection well not included in classes I-IV, provided there is compliance with this chapter and other applicable regulations and statutes. Any project, or proposed project, that may cause underground injection of hazardous wastes, of fluids used for extraction of minerals, oil, and energy and of certain other fluids with potential to contaminate ground water, in addition to being subject to this chapter, is subject to the Coastal Resources Management Regulations [NMIAC, title 15, chapter 10] governing projects which are designated as a “major siting,” or which are located or proposed to be located in an “area of particular concern,” as defined in the Coastal Resources Management Regulations.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 7 Com. Reg. 3370 (Jan. 15, 1985); Amdts Proposed 6 Com. Reg. 3227 (Nov. 15, 1984); Amdts Proposed 6 Com. Reg. 3178 (Oct. 15, 1984); Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

Commission Comment: The Commission changed “proposes” to “proposed” to correct a manifest error.

The Commission created the section titles in §§ 65-90-301 through 65-90-310.

### **§ 65-90-305 Class V Wells Defined**

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Class V wells shall include but not be limited to the following types:

- (a) Air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump.
- (b) Cooling water return flow wells.
- (c) Drainage wells used to drain surface storm runoff into solid or bed rock.
- (d) Dry wells seepage pits, and leaching pits used for the introduction of waste fluids, other than those treated in septic systems.
- (e) Recharge wells used to replenish the water in an aquifer.
- (f) Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water.
- (g) Sand backfill, placing a mixture of water and sand, mill tailings, or other solids into surface and subsurface mines.
- (h) Dry wells or leaching pits used to dispose of septic system effluents.
- (i) Subsidence control wells used to inject fluids to reduce or eliminate subsidence associated with the overdraft of groundwater.
- (j) Geothermal disposal wells related to electrical generation and geothermal wells used for heating and aquaculture.

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

### **§ 65-90-310 Wells Excluded from Class V**

Class V wells shall not include the following types:

- (a) Injection wells located on a drilling platform or other site that is beyond the CNMI's territorial waters.
- (b) Individual or single family residential waste disposal system such as domestic cesspools or septic systems.
- (c) Nonresidential cesspools, septic systems or similar waste disposal systems if such systems
  - (1) Are used solely for the disposal of sanitary waste, and
  - (2) Have the capacity to serve fewer than 20 persons a day.
- (d) Injection wells used for injection of hydrocarbons which are of pipeline quality and are gases at standard temperature and pressure for the purpose of storage.

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- (e) Any dug hole which is not used for emplacement of fluids underground.

Modified, 1 CMC § 3806(f).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

### **§ 65-90-315 Registration**

The owner or operator of any class V well under his control, shall within one year of the effective date of this chapter, notify the Division (on a form to be supplied by the Division) of the existence of any well meeting the definition of class V. The form supplied by the Division shall require the owner or operator to provide at least the following information:

- (a) Facility name and location;
- (b) Name and address of legal contact;
- (c) Ownership of facility;
- (d) Nature and type of injection wells; and
- (e) Operating status of injection wells.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

### **§ 65-90-320 Protection**

All aquifer or parts of aquifers which meet the definition of an “underground source of drinking water” shall be protected as an underground source of drinking water except where exempted.

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

### **§ 65-90-325 Exemption**

After notice and opportunity for public hearing, and subject to the approval of the U.S. Environmental Protection Agency, an aquifer, or portion thereof, may be exempted from being an underground source of drinking water when the Department identifies such aquifer in clear and definite terms using the following criteria:

- (a) It does not currently serve as a public source of drinking water; and
- (b) It cannot now and will not in the future serve as a public source of drinking water because:
  - (1) It is mineral, hydrocarbon or geothermal energy producing;

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- (2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical;
- (3) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or
- (4) The total dissolved solids content of the groundwater is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

### **Part 400 - Access to Records**

#### **§ 65-90-401 Access to Records**

Owners and operators of any injection well shall make all existing records and other pertinent information concerning the construction and operation of such well available to the Division upon request. Requests for information by the public shall be treated in accordance with the procedures described in 40 CFR part 2 (public information). Confidentiality of information shall be treated in accordance with 40 CFR part 144.5.

Modified, 1 CMC § 3806(f).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

### **Part 500 - Corrective Action**

#### **§ 65-90-501 Corrective Action**

For class V wells, if there is any movement of injection or formation fluids underground sources of drinking water, or drinking water, or the presence of that contaminant may cause a violation of the CNMI Drinking Water Regulations [NMIAC, title 65, chapter 20], Commonwealth Register, vol. 5, no. 3, March 31, 1983, or may adversely affect the health of persons, the Chief shall order such additional requirements as may be necessary for corrective action including closure through plugging and abandonment of the injection well to prevent such movement.

Modified, 1 CMC § 3806(f).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

#### **§ 65-90-505 Appeals of Corrective Action**

An order for corrective action issued by the Chief may be appealed by recipient issued the order within fifteen days from the date the Division notifies him/her of such corrective action, as provided by law. This order is immediately effective upon issuance.

Modified, 1 CMC § 3806(e).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

**Part 600 - Enforcement**

**§ 65-90-601 Responsibility of the Department**

The Department, acting through the Commonwealth Attorney General, is responsible for enforcement of the regulations in this chapter in consonance with, and in accordance with the applicable laws of the CNMI and in accordance with U.S. Pub. L. No. 93-523, known as the “Safe Drinking Water Act.” The Attorney General shall have the authority to institute legal actions to enjoin a violation, continuing violation or threatened violation of the regulations in this chapter.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

Commission Comment: The Commission moved the period after “Act” inside of the closing quotation mark to correct a manifest error. The Commission corrected the citation to the Safe Drinking Water Act pursuant to 1 CMC § 3806(g).

The Commission created the section title.

**§ 65-90-605 Penalties**

(a) Any persons\* who violates any provision of this chapter or order issued by the Department or Division charged with responsibilities pursuant to this chapter shall be subject to a civil penalty of not more than one thousand dollars for each day of violation.

(b) Upon request of the Department, the Commonwealth Attorney General shall have the authority to petition the Commonwealth Trial Court or the United States District Court for the Northern Mariana Islands for a judgment assessing damages arising from a violation of this chapter or order of the Department or Division charged with responsibilities pursuant to this chapter. In determining such damages, if any, the court having jurisdiction of the matter shall consider the magnitude of harm caused by the violation, the nature and persistence of the violation, the length of time during which the violation has occurred and any corrective or ameliorative action or circumstances on the part of the person or persons against whom the damages are to be assessed.

(c) Any person who willfully or negligently, violates any provision of this chapter, or order of the Department or Division charged with responsibilities pursuant to this chapter, shall, be subject to criminal prosecution and upon conviction shall be punished by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment not exceeding one year, or both.

(d) Any person who knowingly makes any false statement, representation, or certification in any registration, record, report, plan or other document filed or required to be maintained under this chapter, or by any certification, or order issued under this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained pursuant to this chapter or order of the

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Department pursuant to this chapter shall be subject to criminal prosecution and upon conviction shall be punished by a fine of not more than fifty thousand dollars or by imprisonment for not more than one year, or both.

(e) All sums received as fines pursuant to this section and all fees collected pursuant to this chapter shall be paid to the treasurer of the Commonwealth for credit to the general fund of the Commonwealth.

\* So in original.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).

Commission Comment: The “Commonwealth Judicial Reorganization Act,” PL 6-25 (effective May 2, 1989), renamed the Commonwealth Trial Court and directed that references to the Commonwealth Trial Court in the Commonwealth Code be interpreted to refer to the new Commonwealth Superior Court. See 1 CMC § 3201 and the commission comment thereto.

With respect to the references to the Department of Public Health and Environmental Services, see Executive Order 94-3 (effective August 23, 1994) reorganizing the Commonwealth government executive branch, changing agency names and official titles and effecting numerous other revisions.

### **Part 700 - Miscellaneous Provisions**

#### **§ 65-90-701 Severability**

If any provision of this chapter within or the application thereof is held to be invalid, such invalidity shall not affect any provision of this chapter not specifically held to be invalid.

Modified, 1 CMC § 3806(d).

History: Adopted 6 Com. Reg. 2802 (May 15, 1984); Proposed 6 Com. Reg. 2712 (Apr. 15, 1984).