TITLE 24 – ECOSYSTEM PROTECTION AND DEVELOPMENT

Chapters:

TITLE 24 – CHAPTER 01 – ENVIRONMENTAL QUALITY COMMISSION

Sections:

I. *COMMISSION GENERALLY*

24.0101 Establishment-Composition.

(a) The environmental quality commission was established by the Legislature in 24.0105 (a) A.S.C.A., which reads as follows:

‘There is created an environmental quality commission referred to in this chapter as the commission. The commission consists of 5 members to be appointed by the Governor to serve for an indefinite period of time.”

(b) In accordance with 24.0105 (a) A.S.C.A., the Governor has designated the Lieutenant Governor as chairman of the commission and the government ecologist as the executive secretary. Other members are the director of public works,

the director of economic development and planning, and the director of health, or their representatives.

History: Env. Qual. Comm. Regs., eff prior to 1975. § 1.01.

24.0102 Meetings-Quorum.

(a) Section 24.0 105 A.S.C.A., requires the commission to meet at least 4 times per year at regularly scheduled times and the commission hereby schedules meetings for 2 p.m. on the first Monday of January, March, June, and September unless otherwise announced. More frequent meetings may be called at the discretion of the chairman. A quorum of 3 members is necessary to conduct any business before the commission.

A majority vote of those present is necessary to decide all issues before the commission. A record of each meeting shall be taken and the record shall be available for public inspection.

(b) Meetings will be held in the chairman's office unless otherwise provided in public notice of meetings.

History: Env. Qual. Comm. Regs., eff prior to 1975. § 1.02.

24.0103 Rulemaking authority.

Section 24.0106 (1) A.S.C.A., vests the commission with authority to promulgate rules.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 1.03.

24.0104 Records-Public access.

All rules, written statements, policies, and interpretations formulated and adopted for use by the commission in the discharge of its functions and final orders, decisions, and opinions will be maintained in the Governor's office at Utulei and shall be available for public inspection. All requests for inspection shall be made to the chairman.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 1.04.

24.0105 Policy.

The policy of the commission is stated in24.0102 A.S.C.A.:

"(a) It is the public policy of this territory and the purpose of this chapter (Chapter 24.01 A.S.C.A.) to achieve and maintain such levels of air and water quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this territory and facilitate the enjoyment of the natural attractions of this territory.

"(b) To these ends it is the purpose of this chapter (Chapter 24.01 A.S.C.A.) to provide for a coordinated territory-wide program of air and water pollution prevention, abatement, and control; and to provide a framework within which all values may be balanced in the public interest."

History: Env. Qual. Comm. Regs.. eff prior to 1975, § 1.04.

The Environmental Quality Commission Regulations included two sections numbered 1.04.

24.0106 Powers.

Pursuant to 24.0106 A.S.C.A., the commission may:

(1) hold hearings as necessary relating to any aspect of or matter in the administration of Chapter 24.01 A.S.C.A., and compel the attendance of witnesses and the production of evidence

(2) issue such orders as may be necessary to effectuate the purposes of Chapter 24.01 A.S.C.A., and enforce the same by all appropriate administrative and judicial proceedings;

(3) require access to records relating to emissions which cause or contribute to air contamination and access to records relating to discharges which cause or contribute to water pollution. (Note: The commission interprets this as authority to copy the inspected records.)

(4) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(5) prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air and water pollution in this territory;

(6) encourage voluntary cooperation by persons and affected groups to achieve the purposes of Chapter 24.01 A.S.C.A.;

(7) encourage and conduct studies, investigations, and research relating to air contamination, air pollution, and water pollution and their causes, effects, prevention, abatement, and control;

(8) determine by means of field studies and sampling the degree of air contamination, air pollution, and water pollution in the territory;

(9) establish air and water quality standards for the territory;

(10) collect and disseminate information and conduct educational and training programs relating to air contamination, air pollution, and water pollution;

(11) advise, consult, contract, and cooperate with other agencies of the territory, industries, and the federal government, and with interested persons or groups;

(12) consult, upon request, with any poison proposing to construct, install, or otherwise acquire an air or water contaminant source or device or system, or air or water pollution problem which may be related to the source, device, or system. Nothing in any such consultation shall be construed to relieve any person from compliance with Chapter 24.01 A.S.C.A., rules in force pursuant thereto, or any other provision of law;

(13) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of Chapter 24.01 A.S.C.A.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 1.05.

II. PERMITS

24.0107 Required when-Issuance legal conformity.

(a) The commission prohibits the construction or modification of any sources, installation, modification, or use of any equipment, device, or other article which may cause or contribute to air or water pollution or which is intended primarily to prevent or control the emission of air pollutants or discharge of water pollutants unless a permit therefor has been obtained from the commission. The issuance of permits is to be in accordance with Chapter 4.10, A.S.C.A.

(b) No person shall construct or modify any sources, install, modify, or use any equipment or device capable of causing or contributing to air or water pollution, or designed to prevent air or water pollution, without a permit from the commission.

History: Env. Qual. Comm. Regs., eff prior to 1975. § 2.01.

24.0108 Application-Forms.

Requests for permits shall be submitted to the commission on the forms provided to applicants by the commission.

History: Env. Qual. Comm. Regs.. eff prior to 1975. § 2.02.

24.0109 Application-Information accompanying.

The commission requires that applications for such permits be accompanied by plans, specifications, and such other information as it deems necessary.

History: Env. Qual, Comm. Regs, eff prior to 1975, § 2.03.

24.0110 Application-Posting-Public hearing.

All applications wi11 be publicly posted and public hearings will be held if requested by an interested party within 30 days of posting.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.04.

24.0111 Commission powers-Duration limit.

The commission may issue, suspend, revoke, or renew any permits required pursuant to this article, and in no case will issue permits exceeding 5 years in duration.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.05.

24.0112 Application distribution to other agencies.

Copies of all applications shall be forwarded to the U.S. Environmental Protection Agency, U.S. Coast Guard, and public health division of the department of health.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.06; and Rule 8-88. eff 27 Nov 88.§ .1.

24.0113 Application notice to ASG agencies-Recommendations.

The commission shall notify all appropriate ASG agencies and afford them opportunity to submit written recommendations.

History: Env. Qual. Comm. Regs. eff prior to 1975, § 2.07.

24.0114 Other agency consultations.

Prior to permit issuance, the commission shall consult with the U.S. Environmental Protection Agency, U.S. Army of Engineers, and the U.S. Coast Guard. The commission may also consult with other public or private agencies as it deems appropriate.

History: Env. Qual. Comm. Regs., eff prior to 1975. § 2.08; and Rule 8-88. eff 27 Nov 88. § 2.

24.0115 Modification-Termination.

Permits issued by the commission may be modified or terminated for cause, including but not limited to misrepresentation, or failure to disclose fully all relevant facts, or violation of the conditions of the permit, or change in any condition requiring either

temporary or permanent reduction in permitted discharge.

History; Env. Qual. Comm. Regs, eff prior to 1975, § 2.09.

24.0116 Issuance deadline-Preventive orders.

Within 90 days of the receipt of any application required pursuant to this article, the commission shall issue such permit unless it is determined that the proposed construction or modification will not be in accordance with Cit. 24.01 A.S.C.A., or rules promulgated thereunder, in which case an order shall be issued for the prevention of such construction or modification.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.10.

24.0117 Hearings on preventive orders.

In addition to any other remedies available on account of the issuance of any order prohibiting construction, installation, or establishment, and prior to invoking any such remedies, the person or persons aggrieved thereby shall, upon request m accordance with rules of the commission, be entitled to a hearing on the order. Following such hearing, the order may be affirmed, modified, or withdrawn.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.11.

24.0118 Addition, enlargement, replacement defined.

For the purposes of this article, addition to or enlargement or replacement of an air or water contaminant source, or any major alteration therein, shall be construed as construction, installation, or establishment of a new air or water pollution source.

History: Env. *Qual.*. Comm. Regs., eff prior to 1975, § 2.12.

24.0119 Maintenance

Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to this article shall be maintained in good working order.

History: Env. Qual.. *Comm. Regs., eff prior to 1975, § 2.13.*

24.0120 Brand names.

Nothing in this article shall be construed to authorize the commission to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices, or equipment otherwise available.

History: Env. Qual. *Comm. Regs., eff prior to 1975, § 2.14.*

24.0121 Legal requirements unaffected.

The absence or failure to issue a rule, regulation, or order pursuant to this article shall not relieve any person from compliance with any emission or discharge control requirements or with any other provision of law.

History: Env. Qual. *Comm. Regs., eff prior to 1975, § 2.15.*

III. TERRITORY-WIDE AIR POLLUTION SYSTEM

24.0125 Established-Pollution-source delay or prevention.

The commission establishes a territory-wide system under which a permit is required for the construction and operation of new sources of air pollution, and construction and operation, or modification to, existing sources. The commission may delay or prevent any construction, modification, or operation of air pollution sources which, in the opinion of the chairman, may cause the ambient air pollution level in the locality of such construction, modification, or operation to exceed limits for ambient concentration established by the American Samoa Territorial Implementation Plan promulgated pursuant to the Clean Air Act as amended, 42 U.S.C. 1875 et seq.; or which construction, modification, or operation would, in the opinion of the chairman, violate any provision of any land use permit established by the American Samoa Territorial Implementation Plan.

History: Env. Qual Comm. Regs., eff prior to 1975, § 3.01.

24.0126 Transportation-mode inspection and testing.

The commission may carry out a program of inspection testing of all modes of transportation to enforce the plans applicable to emission standards when necessary and practicable, and to control or limit the operation of motor vehicles and other modes of transportation when, in the opinion of the chairman, such modes of transportation are producing or pose an immediate danger of producing unacceptable levels of air pollution.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 3.02.

IV. INSPECTIONS, TESTING, SAMPLING, AND MONITORING

24.0130 Right of entry-Inspection.

Any duly authorized officer, employee, or representative of the environmental quality commission may enter and inspect, during reasonable hours, any building or place except a building primarily designed for and used exclusively for a private residence for the purposes of investigating an actual suspected source of air or water

pollution and ascertaining compliance or noncompliance with Chapter 24.01 A.S.C.A., and the rules issued pursuant thereto. No person shall refuse entry or access to any authorized representative of the commission who requests appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such inspection. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 4,01.

24.0131 Sampling.

The commission may conduct tests and take samples of air and water contaminants, fuel, process materials, or other materials which affect or may affect emission or discharge of air or water pollution from any source and copy data maintained by the owner or operator of the premises relative to air or water pollution. Upon request of the commission, the person responsible for the source to be tested shall provide necessary holes in stacks, ducts, or pipes and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emission or discharge of air or water pollution. If an authorized employee of the commission, during the course of an inspection, obtains a sample of air or water contaminant, fuel, process material, or other material he shall give the owner, or operator of the equipment or fuel facility a receipt for the sample obtained.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 4.02.

24.0132 Operator testing and monitoring-Power to require.

The commission may require the operator of a pollution source to install monitoring equipment and conduct tests, collect, monitor, maintain records and data, and submit reports on emission and discharge parameters specified by the commission.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 4.03.

V. EMISSION AND DISCHARGE STANDARDS

24.0135 Air.

The commission reaffirms the air pollution strategy contained in the air implementation plan for the territory, as that strategy is necessary to maintain high air quality within the territory. All federal rules, regulations, and law will also be strictly adhered to within the territory.

History: Env. Qual. Comm. Regs. eff prior to 1975, § 5.01.

24.0136 Water.

Discharges into the waters of the territory must comply with all rules of the commission and "National Pollutant Discharge Elimination System Rules and Regulations" promulgated by the federal Environmental Protection Agency. All applicable NPDES forms will be used by the commission.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 5.02.

VI. EMERGENCY PROCEDURES

24.0140 Order to abate-Hearing.

When the chairman of the commission finds that a generalized condition of air or water pollution exists or that emissions or discharges of one or more air or water contaminant sources is causing imminent danger to human health and safety and that it creates an emergency requiring immediate action to protect human health or safety, the chairman, with the concurrence of the Governor, shall order persons causing or contributing to the air or water pollution to reduce or discontinue immediately the emission or discharge of air contaminants or water pollutants, and such order shall fix a place and time not later than 24 hours thereafter for a hearing to be held before the commission. Not more than 24 hours after the commencement of such hearing and without adjournment thereof, the commission shall affirm, modify, or set aside the order of the chairman.

History: Env. Qual. Comm. Regs. eff prior to 1975, § 7.01.

24.0141 Suit to restrain.

Upon receipt of evidence that a pollution source or combination of sources is presenting imminent and substantial endangerment to the health of persons, the commission may bring a suit to immediately restrain any person causing or contributing to such pollution.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 7.02.

VII. HEARINGS AND JUDICIAL REVIEW

24.0145 Rulemaking hearing requirement.

No rule and no amendment or repeal thereof shall take effect except after public hearing on due notice as provided in the Chapter 4.10 A.S.C.A.

History: Env. Qual. Comm. Regs., eff. prior to 1975, § 8.01.

24.0146 Emergency orders.

Nothing in this article shall be construed to require a hearing prior to the issuance of an emergency order pursuant to 24.0106 A.S.C.A.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 8.02.

24.0147 Judicial review.

Any person aggrieved by an order of the commission may have judicial review thereof by filing a petition

with the High Court of American Samoa no later than 20 days after being notified that the order has been entered. The petition shall seek an order by the High Court which directs the commission to modify or withdraw its order affecting the petitioner. It shall be granted only when the High Court finds from a review of all the evidence which was before the commission that the commission acted arbitrarily or capriciously.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 8.03.

24.0148 Injunction granting standard.

In the event the commission petitions the High Court for an injunction pursuant to 24.0152 A.S.C.A., the High Court shall grant such injunction unless the High Court finds from a review of all the evidence which was before the commission that the commission acted arbitrarily or capriciously.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 8.04.

VIII. CONFIDENTIALITY OF RECORDS

24.0150 Confidentiality standard.

Any records, reports, or information obtained shall be available to the public except that upon a showing satisfactory to the commission by any person that records, reports, or information, or a particular part thereof (other than emission or discharge data), to which the commission has access, if made public, would divulge production or sales figures or methods, processes, or production unique to such person, or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the commission shall consider such record, report, or information or particular portion thereof confidential.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 9.01.

24.0151 Abstracted publication.

Nothing in this chapter shall be construed to prevent the use of such records or information by the commission in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere; provided that such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 9.02.

24.0152 Disclosure to enforce law.

Nothing in this chapter shall be construed to prevent disclosure of such reports, records, or information to federal, state, or local representatives as necessary for purposes of administration of any federal, state, or local air or water pollution control laws, or when relevant in any proceeding under Title 24 A.S.C.A.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 9.03.

IX. ENFORCEMENT

For sample form of an order or summons of the commission, see Appendix A to 24.01.

24.0155 Notice of violation-Order to correct-Hearing.

Whenever the commission has reason to believe that a violation of any provision of any rule pursuant to Chapter 24.01 A.S.C.A., has occurred, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provisions of Chapter 24.01 A.S.C.A., or rule alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. Any such order shall become final unless, no later than ten days after the date the notice and order are served, The person or persons named therein request in writing a hearing before the commission. Upon such request, the commission shall hold a hearing. In lieu of an order, the commission may require that the alleged violator or violators appear before the commission for a hearing at a time and place specified in the notice and answer the charges complained of, or the commission may initiate further action pursuant to the A.S.C.A., and all adopted rules of the commission.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 6.01.

24.0156 Action after heating-Order content generally.

If after a hearing held pursuant to 24.0115, the commission finds that a violation or violations have occurred, it shall affirm or modify its order previously issued, or issue an appropriate order or orders for the prevention, abatement or control of the emissions or discharges involved or for the taking of such other corrective action as may be appropriate. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the emissions of discharges.

History: Env. Qual. Comm. Regs. eff prior 1975, § 6.02.

24.0157 Injunction enforcing order.

In the event the procedures outlined in 24.0155 and 24.0156 are followed and the offender falls to comply with the order issued by the commission, the commission, in addition to other remedies set out in this chapter, may apply to the High Court of American Samoa for an injunction requiring the offender to cease doing business until such time as the offender

furnishes definitive plans and specifications, satisfactory to the commission, to show compliance with Chapter 24.01 A.S.C.A., the rules pursuant thereto, and the orders of the commission. When the offender furnishes the plans called for under this section the commission shall immediately petition the High Court to lift such injunction.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 6.03.

24.0158 Voluntary compliance efforts.

Nothing shall prevent the commission from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

History: Env. Qual. Comm. Regs., eff prior to 1975. § 6.04.

4.0159 Violation-Penalty.

Penalties for violation of this chapter shall be the same as for the violation of Chapter 24.01 A.S.C.A., as amended.

History: Env. Qual. Comm. Regs.. eff prior to 1975. § 6.05.

Appendix A – Summons Sample Form

No: _____

SUMMONS

Date_____

The undersigned member of the Environmental Quality Commission has been informed, and upon such information, has reason to believe that you, SAMPLE ONLY, may be found in violation of the Environmental Quality Act, Chapter 24.01 ASCA. In addition to having the power to adopt, amend, and repeal rules and regulations to assure environmental quality, the Environmental Quality Commission may issue such orders as may be necessary to enforce the rules of the Commission.

The law further states that any person who violates any provision of the Act, or any rule or regulation enforced thereto, shall be subject to a fine not to exceed $500, with each day of violation constituting a separate offense.

Therefore, under the powers of the American Samoa Code Annotated and the rules adopted by the Environmental Quality Commission, you are hereby ordered to implement the changes described below within 10 days. If corrective action is not take by that time, you shall become subject to further legal action. You may request a hearing before the Environmental Quality Commission by contacting the Office of the Governor within 10 days of the date of this order. If you have further questions concerning this summons notify the Environmental Quality Commission at the Office of the Governor.

_____

Violator

_____

Signature of Issuing Authority

Place of Offense.

_____

_____

Description of Offense.

_____

_____

Corrective Changes Required.

_____

_____

[End Of Title 24 – Chapter 1]

TITLE 24 – CHAPTER 02 – WATER QUALITY STANDARDS

Sections:

Editors Note – 11 Dec 21: The text for this Rule is found on the American Samoa Bar Association Website. No other source for this Rule was found but is included at face value and accorded weight by virtue of it being posted by an Officer of the Court.

UPDATE to Editor's Note – 25 Mar 22: Text for Rule discovered and verified through AS-EPA.

24.0201 Definitions.

As used in this chapter and in conformance with the Federal Water Pollution Control Act, as amended:

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

(b) "acute toxicity" means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms;

(c) "ambient conditions" means the water quality condition that would occur in the receiving waters if these waters were not influenced by any proposed new human activity or discharge;

(d) "animal pen" refers to an animal feeding operation (AFO) facility or lot (other than an aquatic animal production facility) which is separate from any waste treatment facilities, where animals have been, are, or will be stabled or confined and fed or maintained;

(e) "ASAC" means the American Samoa Administrative Code;

(f) "ASCA" means the American Samoa Code Annotated;

(g) "AS-EPA" means the American Samoa Environmental Protection Agency, the agency responsible for implementation and enforcement of Water Quality Standards in American Samoa;

(h) "ASG" means the American Samoa Government;

(i) "chronic exposure value" means the threshold value at or below which there should be no unacceptable effects to aquatic organisms and their uses if the four-day concentration does not exceed that value more than once every three years on the average;

(j) "chronic toxicity" means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as an alteration in growth rate or reproduction;

(k) "class I waters" means fresh surface waters above impoundments or diversions of water used as a potable water supply;

(l) "class II waters" means all fresh surface waters that are not class I;

(m) "Clean Water Act" or "CWA" means the Federal Water Pollution Control Act;

(n) "discharge of a pollutant" means any addition of any pollutant to the waters of American Samoa from any point source;

(o) "embayment" means a body of water subject to tidal action and bounded by headlands which restrict the exchange of water with the open ocean. A bay or lagoon is an embayment if the ratio of the volume of water (cubic feet) to the cross-sectional area (square feet) at the entrance is more than 700, when determined at mean lower low water. Embayments include Pago Pago Harbor, Fagatele Bay, Pala Lagoon, Afono Bay, Fagasa Bay, Masefau Bay, and Vatia Bay.

(p) "EQC" means the Environmental Quality Commission of the American Samoa Government and its authorized agents;

(q) "fresh surface waters" means all fresh territorial waters including perennial, intermittent, and ephemeral freshwater streams, all natural and artificial impoundments, springs, seeps and wetlands, including coastal wetlands not

surface-connected to the ocean. This includes all surface territorial waters that are not embayments, open coastal waters, or ocean waters;

(r) "geometric mean" is defined as nth root of the products of C1 to Cn in which n is the number of samples analyzed during the period and C is the concentration of the parameter found in each sample. The geomean is calculated by taking the log10 of sample values, averaging those values and the raising the average to the power of 10;

(s) "ground water" means water in the part of the ground that includes all subsurface waters, basal and parabasal water, perched water, water percolating through the unsaturated zone, and all saline waters below and along the perimeter of the basal fresh water body;

(t) "hazardous materials" means any material that poses a threat to human health and/or the environment when improperly managed, including toxic, corrosive, ignitable, explosive or chemically reactive substances;

(u) "light penetration depth" means the depth reached by one percent of the sunlight incident on the surface of a body of water;

(v) "NPDES" means the National Pollutant Discharge Elimination System;

(w) "natural conditions" describes the quality of surface and marine water reasonably assumed to be not influenced by human-caused pollution or disturbance;

(x) "nonpoint source pollution" is defined as pollution caused by sediments, nutrients and organic and toxic substances originating from land use activities and/or from the atmosphere, which are carried to receiving waters by runoff at a rate that exceeds reference condition levels;

(y) "ocean waters" means those waters that extend from the 100-fathom (600-foot or 183-meter) depth contour seaward;

(z) "open coastal waters" means those waters that begin at the shoreline and extend seaward to the 100-fathom (600-foot or 183-meter) depth contour from mean lower low water. This category includes small bays with good water movement which do not qualify as embayments;

(aa) "Pago Pago Harbor" is defined as landward of a line drawn from Niuloa Point to Breaker's Point;

(bb) "Pala Lagoon" is defined as that body of water inside a line drawn from the eastern most point of the airport to the nearest part of Coconut Point;

(cc) "person" means any individual, partnership, firm, state, federal government, association, municipality, public or private corporation, subdivision or agency of the territory, trust, estate or any other legal entity or interstate body;

(dd) "point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged;

(ee) "pollutant" means dredged spoil, sediment, solid waste, petroleum product, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, excavated material, or industrial, municipal, and agricultural waste discharged into water;

(ff) "pollution" means the manmade or man induced alteration of the physical, chemical, biological, or radiological condition of territorial waters;

(gg) "process waste water" means any water which comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by product, or waste product during manufacturing or processing operations;

(hh) "reference conditions" describes the characteristics of water body segments least impaired by human activities, where the influence of human activities is reasonably assumed to be present. As such, reference conditions can be used to describe attainable biological or habitat conditions for water body segments with common watershed or catchment characteristics within defined water body classes;

(ii) "Statistical Threshold Value" means the approximation of the 90th percentile of the water quality distribution;

(jj) "Territorial waters" means waters of the United States as defined in 40 CFR 122.2, as well as

those that are located within the jurisdiction of the territory;

(kk) "wetlands" mean those areas that are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, mangroves, streams, springs, cultivated marshes, and similar areas;

(ll) "zone of initial dilution" or "ZID" is that area of a plume where dilution is achieved due to the combined effects of momentum and buoyancy of the effluent discharged from an orifice. Unless otherwise approved by the EQC and US EPA, the zone of initial dilution and initial dilution ratio shall be determined using the latest version of the UDKHDEN model (EPA/600/3-85-073a,b), assuming zero ambient current and representative reference condition concentrations of the pollutant in question;

(mm) "zone of mixing" or "ZOM" means a defined portion of a water body receiving water around a point source within which specific modifications of applicable water quality standards are permitted by the EQC.

History: Rule 8-81, eff 16 Jun 81, § 1; Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: 2005, new definitions and renumbering; 2022, new definitions and renumbering

24.0202 Policy of Water Quality Degradation.

(a) It is the policy of the Environmental Quality Commission (EQC) that existing water uses and the level of water quality necessary to protect existing uses shall be maintained. Any water quality degradation which would interfere with or become injurious to these existing uses is prohibited. Existing uses are those uses identified in these standards.

(b) Waters whose existing quality exceeds the level necessary to support existing uses shall not be degraded unless and until the EQC finds, after full satisfaction of the intergovernmental coordinating and public participation provisions contained in the Environmental Quality Act (ASCA Title 24), that allowing lower water quality is necessary to accommodate important economic or social needs of the Territory. In no event, however, may water quality be degraded to an extent that it would interfere with or become injurious to existing uses.

(c) No further degradation shall be allowed in waters which constitute an outstanding public resource or in waters of exceptional recreational or ecological significance. Waters which receive this protection shall be classified as unique waters by the EQC.

(d) Subject to the provisions of sections (a)-(c) above, the EQC may allow limited degradation if it is determined that all the following criteria are met:

(1) The proposed degraded level of water quality will support existing uses;

(2) A compelling economic or social need of the Territory is served by allowing limited degradation;

(3) The highest practicable statutory and regulatory requirements will be met by existing and new point sources of pollutants; and

(4) All cost-effective and reasonable best management practices for non-point sources of pollutants will be achieved.

(e) In those cases where potential water quality impairment is associated with a thermal discharge, nothing in these regulations or their implementation shall be inconsistent with Section 316 of the Clean Water Act.

(f) In carrying out its responsibilities under these standards, the EQC and AS-EPA will undertake such activities and studies as may be necessary to implement the above policies. These activities and studies may include, but are not limited to:

(1) monitoring the quality of water and the impacts of pollutant discharges;

(2) requiring appropriate levels of treatment and other pollutant control measures through conditions placed on water quality certifications (ASAC § 24.0209) and other approvals granted by the EQC; and

(3) performing inspections and, as necessary, undertaking enforcement actions to assure compliance.

History: Rule 1-91, eff 1 Mar 91, (part); Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

24.0203 Authority.

These standards are adopted under the provisions of the American Samoa Environmental Quality Act. ASCA, Title 24, Chapter 1.

History: Rule 1-91, eff 1 Mar 91, (part); Rule 8-81, eff 16 Jun 81, § 1; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0204 Standards Review.

The EQC may revise these standards at any time in accordance with the American Samoa Administrative Procedures Act (APA), as set forth in ASCA, Title 4, Chapter 10, and the US EPA public participation regulation, as set forth in 40 CFR part 25 and 40 CFR part 131. The EQC will submit any such revisions to US EPA in accordance with §303(c) of the CWA., as amended.

History: Rule 1-91, eff 1 Mar 91, (part); Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0205 Water Classifications – Protected and Prohibited Uses.

(a) Prohibited uses and activities applicable to all waters:

(1) Dumping of solid waste, including dead animals, directly into the water or in a manner that could reasonably be expected to adversely affect water quality;

(2) The discharge of oil, sludge, oil refuse, fuel oil, or bilge waters directly into the water or in a manner that could reasonably be expected to adversely affect water quality;

(3) The discharge of toxic, hazardous or radioactive waste directly into the water or in a manner that could reasonably be expected to adversely affect water quality;

(4) The dumping or discharge of industrial, domestic or animal waste except as approved by the EQC and, as applicable, permitted by the US EPA; and

(5) Whole and limited body-contact recreation, e.g., swimming, snorkeling, surfing, and scuba diving within any zone of mixing.

(b) Fresh Surface Waters

(1) Class 1 Fresh Surface Waters

(A) Class 1 waters are to remain in as near their natural state as possible with a minimum of pollution from any human activity. Protected uses of these waters are: potable water supplies, support and propagation of indigenous aquatic and terrestrial life, and compatible recreation and aesthetic enjoyment.

(B) Prohibited uses and activities include, but are not limited to:

(i) Point source discharges of pollutants;

(ii) Dredging and filling activities;

(iii) Bathing, including washing clothes and dishes;

(iv) Animal pens over or within 100 feet of the water body;

(v) Siting of septic tanks including drain fields within 200 feet of the water body;

(vi) Land disturbing (e.g., grading, tillage) activities within 100 feet of the water body; and

(vii) Wood cutting or clearing within 100 feet of the water body.

(2) Class 2 Fresh Surface Waters

(A) Class 2 waters shall be protected for the support and propagation of indigenous aquatic life, recreation in and on the water, and aesthetic enjoyment.

(B) Prohibited uses and activities include, but are not limited to:

(i) Point source discharges of pollutants except as approved by the EQC. No zones of mixing will be granted;

(ii) Dredging or filling activities, except as approved by EQC;

(iii) Bathing, including washing clothes and dishes;

(iv) Animal pens over or within 50 feet of the water body;

(v) Siting of septic tanks:

(a) Hollow block constructed tanks within 50 feet of the water body;

(b) Cast-in-place concrete tanks within 30 feet of the water body;

(c) Molded plastic tanks (e.g., high-density polyethylene (HDPE) within 20 feet of the water body.

(vi) Siting of septic tank drain fields within 50 feet of the water body.

(vii) Land disturbing (e.g., grading, tillage) activities within 50 feet of the water body; and

(viii) Wood cutting or clearing within 50 feet of the water body.

(c) Ground Waters

(1) Class 1G Ground Waters

(A) Class 1G groundwaters are current or potential supplies of potable water and their associated recharge areas and shall be protected as potable water supplies. Unless otherwise identified, Class 1G groundwaters include all ground water with a naturally occurring salinity of less than 10,000 mg/l.

(B) Prohibited uses and activities include, but are not limited to:

(i) Direct discharge of any waste through injection wells;

(ii) The surface or subsurface discharge of industrial waste;

(iii) Dumping or landfilling of solid waste on the surface or subsurface; and

(iv) The surface or subsurface discharge of treated industrial, human or animal waste, except through treatment and disposal devices or systems approved by EQC.

(2) Class 2G Ground Waters

(A) Class 2G groundwaters are waters with naturally occurring salinities of 10,000 mg/l or more, or other groundwaters not designated as class 1G.

(B) Prohibited uses and activities include, but are not limited to:

(i) The surface or subsurface discharge of industrial, human or animal waste, except through treatment and disposal systems approved by the EQC.

(d) Wetlands

(1) All wetlands are to remain in as near their natural state as possible and shall be protected to support the propagation of indigenous aquatic and terrestrial life, recreation and subsistence fishing, food cultivation and gathering, aesthetic enjoyment, recreation in an on water, flood control, and recharge of groundwaters.

(2) Prohibited uses and activities include, but are not limited to:

(A) Point source discharges of pollutants;

(B) Dredging and filling activities, except as approved by the EQC;

(C) Animal pens directly over or within 50 feet of the wetland; and

(D) Siting of septic tanks including drain fields within 50 feet of the wetland.

(e) Embayments

All embayments are to remain in as nearly their natural state as possible.

(1) Pago Pago Harbor: Pago Pago Harbor has been designated by the American Samoa Government to be developed into a transshipment center for the South Pacific. Recognizing its unique position as an embayment where water quality has been degraded from the natural condition, the EQC has established a separate set of standards for Pago Pago Harbor.

(A) Protected uses for Pago Pago Harbor:

(i) Recreational and subsistence fishing except for exclusions as specified under federal regulations such as no take zones;

(ii) Boat-launching ramps and designated mooring areas;

(iii) Subsistence food gathering; e.g. shellfish harvesting except for exclusions as specified under federal regulations such as no take zones;

(iv) Aesthetic enjoyment;

(v) Whole and limited body-contact recreation, e.g. swimming, snorkeling, and scuba diving;

(vi) Support and propagation of marine life;

(vii) Industrial water supply;

(viii) Mari-culture development except for exclusions as specified under federal regulations such as no take zones;

(ix) Normal harbor activities; e.g. ship movements, docking, loading and unloading, marine railways and floating drydocks; and

(x) Scientific investigations.

(B) Prohibited uses include but are not limited to:

(i) Dumping or discharge of solid waste;

(ii) Animal pens over or within 50 feet of any shoreline:

(iii) Dredging and filling activities; except as approved by the EQC;

(iv) Toxic, hazardous and radioactive waste discharges; and

(v) Discharge of oil sludge, oil refuse, fuel oil, or bilge water, or any other wastewater from any vessel or unpermitted shoreside facility.

(C) Zones of mixing may be granted in Pago Pago Harbor by the EQC, however, no zones of mixing will be allowed within 500 feet of Goat Island Point or beneath this surface area to the bottom of the harbor.

(2) Special embayments

(A) Fagatele Bay is designated as marine sanctuary by the U.S. Department of Commerce because of pristine water quality, remote location, and rich underwater resources. Therefore, the EQC has assigned specific water quality standards to prohibit any reduction in water quality in the bay.

(B) Nu'uuli Pala Lagoon is a shallow embayment that is important as a breeding ground for the marine life of the Territory. It has been designated by the American Samoa Coastal Management Plan Rules as a special management area. Therefore, the EQC has also classified the Nu'uuli Pala Lagoon as a special embayment.

(C) Protected uses:

(i) Recreational and subsistence fishing except for exclusions as specified under federal regulations such as no take zones;

(ii) Subsistence food gathering, e.g. shellfish harvesting except for exclusions as specified under federal regulations such as no take zones;

(iii) Aesthetic enjoyment;

(iv) Whole and limited body-contact recreation, e.g. swimming, snorkeling, surfing, and scuba diving;

(v) Support and propagation of marine life;

(vi) Mari-culture development except for exclusions as specified under federal regulations such as no take zones; and

(vii) Scientific investigations.

(D) Prohibited uses include but are not limited to:

(i) Dumping or discharge of solid or industrial waste materials;

(ii) Animal pens over or within 50 feet of any shoreline;

(iii) Dredging and filling activities, except when approved by the EQC;

(iv) Toxic, hazardous and radioactive waste discharges; and

(v) Discharge of oil sludge, oil refuse, fuel oil, or bilge water, or any other wastewater from any vessel or unpermitted shoreside facility.

(E) Zones of mixing will not be allowed in Pala Lagoon or Fagatele Bay.

(3) Other Embayments: All embayments of the Territory excluding Pago Pago Harbor, Pala Lagoon, and Fagatele Bay are included in this category.

(A) Protected uses:

(i) Recreational and subsistence fishing except for exclusions as specified under federal regulations such as no take zones;

(ii) Boat-launching ramps and designated mooring area;

(iii) Subsistence food gathering; e.g. shellfish harvesting except for exclusions as specified under federal regulations such as no take zones;

(iv) Aesthetic enjoyment;

(v) Whole and limited body-contact recreation, e.g., bathing, swimming, snorkeling, surfing, and scuba diving;

(vi) Support and propagation of marine life; and

(vii) Mari-culture development except for exclusions as specified under federal regulations such as no take zones.

(B) Prohibited uses include but are not limited to:

(i) Dumping or discharge of solid or industrial waste material;

(ii) Animal pens over or within 50 feet of any shoreline;

(iii) Dredging and filling activities, except when approved by EQC;

(iv) Toxic, hazardous and radioactive waste discharges; and

(v) Discharge of oil sludge, oil refuse, fuel oil, or bilge water from any vessel or shoreside facility.

(C) Zones of mixing may be granted in the embayments included in this paragraph by EQC.

(f) Open Coastal Waters

(1) Protected uses:

(A) Commercial, subsistence, and recreational fishing except for exclusions as specified under federal regulations such as no take zones;

(B) Scientific investigations;

(C) Whole and limited body-contact recreation, e.g., swimming, snorkeling, surfing, and scuba diving;

(D) Harbors and boat-launching ramps;

(E) Commercial and recreational boating;

(F) The support and propagation of marine life; and

(G) Aesthetic enjoyment.

(2) Prohibited uses include but are not limited to:

(A) Offshore oil recovery;

(B) Dumping or discharge of solid or industrial waste material;

(C) Discharge of oil sludge, oil refuse, fuel oil, bilge waters, or any other wastewater from any vessel or unpermitted shore-side facility;

(D) Animal pens over or within 50 feet of any shoreline;

(E) Dredging and filling activities except when approved by the EQC;

(F) Toxic, hazardous and radioactive waste discharges; and

(G) Point source discharges in Manu'a off Ofu Park and between Ofu Park and

the Ofu-Olosega Bridge within 1,000 feet of the bridge.

(g) Ocean Waters

(1) Protected uses:

(A) Commercial, subsistence, and recreational fishing except for exclusions as specified under federal regulations such as no take zones;

(B) Scientific investigations;

(C) Commercial and recreational boating;

(D) The support and propagation of marine life;

(E) Aesthetic enjoyment; and

(F) Whole or limited body-contact recreation.

(2) Prohibited uses include but are not limited to:

(A) Discharge of oil sludge, oil refuse, fuel oil, bilge waters, or any other wastewater from any vessel;

(B) Dumping of solid or industrial waste materials without an EPA ocean dumping permit, except as approved by EQC under exclusions in the federal ocean dumping regulations; and

(C) Toxic, hazardous and radioactive waste discharges.

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0206 Standards of Water Quality.

The following standards apply to all territorial and ground waters including but not limited to fresh surface waters, ground waters, embayments, open coastal waters, and oceanic waters of the territory, except as otherwise provided in §24.0207 (Zones of Mixing):

(a) They shall be substantially free from materials attributable to sewage, industrial wastes, or other activities of man that will produce objectionable color, odor, or taste, either of itself or in combinations, or in the biota;

(b) They shall be substantially free from visible floating materials, grease, oil, scum, foam, and other floating material attributable to sewage, industrial wastes, or other activities of man;

(c) They shall be substantially free from materials attributable to sewage, industrial wastes, or other activities of man that will produce visible turbidity or settle to form objectionable deposits;

(d) They shall be substantially free from substances and conditions or combinations thereof attributable to sewage, industrial wastes, or other activities of man which may be toxic to humans, other animals, plants, and aquatic life or produce undesirable aquatic life;

(e) The temperature shall not deviate more than 1.5 degrees Fahrenheit from conditions which would occur naturally and shall not fluctuate more than 1-degree Fahrenheit on an hourly basis or exceed 85 degrees Fahrenheit due to the influence of other than natural causes;

(f) Radioactivity:

(1) Since human exposure to any ionizing radiation is undesirable, the concentration of radioactivity in any waters will be maintained at the lowest practicable level.

(2) No radioactive materials shall be present in any waters as a consequence of the failure of an installation to exercise appropriate controls to eliminate releases.

(3) The concentration of radioactivity shall not:

(A) result in accumulations or radioactivity in edible plants and animals that present a hazard to consumers or are harmful to aquatic or terrestrial life, as recommended by the Federal Radiation Council in the "Radiation Protection Guides";

(B) exceed 1/30 of the maximum permissible concentrations (MPC) values given for continuous occupational exposures in the National Bureau of Standards "Handbook No. 69", as revised; or

(C) exceed the current National Primary Drinking Water Regulations for waters used for public or domestic water supplies.

(g) Toxic Substances:

(1) Class 1 Surface Waters and Class 1G Groundwater.

The concentration of toxic pollutants shall not exceed the more stringent of the aquatic life criteria for freshwater or the human health concentration criteria for consumption of water and organisms in the priority toxic pollutant table of the National Recommended Water Quality Criteria 2002, EPA-822-R-02-047, November 2002 (EPA 2002) or the most recent version.

(2) Class 2 Surface Water and Wetlands.

The concentration of toxic pollutants shall not exceed the more stringent of the aquatic life criteria for freshwater or the human health concentration criteria for consumption of water and organisms found in EPA 2002 or the most recent version.

(3) All Embayments, Open Coastal Waters and Ocean Waters.

Except as may be allowed by the EQC within a Zone of Mixing (ASAC § 24.0207), the concentration of toxic pollutants shall not exceed the more stringent of the aquatic life criteria for marine waters or the human health concentration criteria for consumption of organisms found in EPA 2002 or the most recent version.

(4) Subject to US EPA approval, the EQC may from time to time adopt site-specific toxic pollutant criteria. Any such adoption shall involve public participation and be based upon site-specific data and studies demonstrating that the alternate criteria will support the propagation of aquatic life and protect the public health.

(h) Toxicity Requirements - Acute and Chronic

(1) All effluents containing materials attributable to the activities of man shall be considered harmful unless acceptable bioassay tests have shown otherwise. In its discretion the EQC may require the person responsible for the discharge of the effluent to perform bioassay tests on the effluent in question.

(2) Compliance with §24.0206(d) of these standards will be determined using indicator organisms, analysis of species diversity, population density, growth anomalies, bioassays, or other appropriate methods as specified by the EQC.

(3) The chronic effect on test organisms outside a zone of mixing, if one exists, in the water body receiving the effluent in question shall not be more than that for waters of the same water body that are unaffected by the discharge of pollutant, or, when necessary for other control water meeting the criteria described in the latest edition of "Standard Methods for the Examination of Water and Wastewater."

(4) Compliance with the above standards shall be evaluated with a 96-hour bioassay or short-term method for estimating chronic toxicity using methods described in the most recently updated versions of the following documents:

(A) EPA/821/R-02-013 Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, Fourth Edition, 2002.

(B) EPA/600/4-90-027F Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Cincinnati, Ohio, EMSL, Fourth Edition, 1993.

(C) EPA/600/R-95-136 Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms, Cincinnati, Ohio, EMSL, 1995.

(i) There shall be no changes in basin geometry or freshwater inflow that will alter current patterns in such a way as to adversely affect existing biological populations or sediment distribution. To protect estuarine organisms, no change in channels, basin geometry, or freshwater influx shall be made which would cause permanent changes in existing isohaline patterns of more than 10 percent.

(j) The following additional toxic standards shall apply:

(1) Arsenic: The human health numeric criteria for arsenic in the EPA 2002 publication are excluded from the American Samoa Water Quality Standards and instead, the American Samoa human health criteria for arsenic for freshwaters is 10 µg/l.

(2) Total Mercury: In addition to the methyl mercury criteria for human health from the EPA 2002 publication, the water column concentration of mercury shall not exceed 0.05 µg/l.

(3) Total Residual Chlorine: Total residual chlorine in any ambient water shall not exceed 11 micrograms per liter for fresh water and 7.5 micrograms per liter for marine waters.

(k) Fresh surface waters. The following standards apply specifically to all fresh surface waters of the territory:

Parameter	Median[1] not to exceed	Not to exceed more than 10% of the time	Not to exceed more than 2% of the time
Turbidity (NTU)	5	8	12
Total Phosphorus (µg/l as P)	175	390	635
Total Nitrogen (µg/l as N)	300	650	1000
Total Suspended Solids (mg/l)	5	10	15
[1]Refer to most recent version of "AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria" for median calculation method.			
Ammonia:	The ammonia toxicity standards for fresh and marine waters are tabulated in Appendix A.		
Dissolved Oxygen:	Concentration of dissolved oxygen shall not be decreased to less than 75% saturation at any time, as influenced by salinity or naturally occurring temperature variations. Where natural conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.		
pH:	The pH range shall be 6.5 to 8.6 and be within 0.2 pH units of that which would occur naturally.		
Enterococci:	35 per 100 ml (geometric mean indicator density) 130 per 100 ml (statistical threshold value)		
E. coli:	126 per 100 ml (geometric mean indicator density) 410 per 100 ml (statistical threshold value)		

(l) Embayments.

The following standards apply to all embayments except Pago Pago Harbor, Fagatele Bay and Pala Lagoon:

Parameter	Median[1] not to exceed	Not to exceed more than 10% of the time	Not to exceed more than 2% of the time
Turbidity (NTU)	0.35	0.45	0.60
Total Phosphorus (µg/l as P)	20	40	60
Total Nitrogen (µg/l as N)	150	250	350
Chlorophyll a (µg/l)	0.5	1.5	3.0
Light Penetration[2] (feet)	120	100	75
[1]Refer to most recent version of "AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria" for median calculation method.			
[2] Light Penetration to exceed given values			
Ammonia:	The ammonia toxicity standards for fresh and marine waters are tabulated in Appendix A.		
Dissolved Oxygen:	Concentration of dissolved oxygen shall not be decreased to less than 80% saturation at any time, as influenced by salinity or naturally occurring temperature variations. Where natural conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.		
pH:	The pH range shall be 6.5 to 8.6 and be within 0.2 pH units of that which would occur naturally.		
Enterococci:	35 per 100 ml (geometric mean indicator density) 130 per 100 ml (statistical threshold value)		

(m) Pago Pago Harbor

The following standards apply specifically to Pago Pago Harbor:

Parameter	Median[1] not to exceed	Not to exceed more than 10% of the time	Not to exceed more than 2% of the time
Turbidity (NTU)	0.75	1.0	1.5
Total Phosphorus (µg/l as P)	30	60	90
Total Nitrogen (µg/l as N)	200	350	500
Chlorophyll a (µg/l)	1.0	3.0	5.0

Light Penetration[2] (feet)	65	45	35
[1]Refer to most recent version of "AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria" for median calculation method.			
[2] Light Penetration to exceed given values			
Ammonia:	The ammonia toxicity standards for fresh and marine waters are tabulated in Appendix A.		
Dissolved Oxygen:	Concentration of dissolved oxygen shall not be decreased to less than 80% saturation at any time, as influenced by salinity or naturally occurring temperature variations. Where natural conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.		
pH:	The pH range shall be 6.5 to 8.6 and be within 0.2 pH units of that which would occur naturally.		
Enterococci:	35 per 100 ml (geometric mean indicator density) 130 per 100 ml (statistical threshold value)		

(n) Embayments – Fagatele Bay and Pala Lagoon

Parameter	Median[1] not to exceed	Not to exceed more than 10% of the time	Not to exceed more than 2% of the time
Turbidity (NTU)			
Fagatele Bay	0.25	0.35	0.50
Pala Lagoon	0.75	1.5	2.5
Total Phosphorus (µg/l as P)	15	36	60
Total Nitrogen (µg/l as N)	135	220	300
Chlorophyll a (µg/l)	0.35	0.60	1.0
Light Penetration[2] (feet)	130	110	90
[1]Refer to most recent version of "AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria" for median calculation method.			
[2] Light Penetration to exceed given values			
Ammonia:	The ammonia toxicity standards for fresh and marine waters are tabulated in Appendix A.		
Dissolved Oxygen:	Concentration of dissolved oxygen shall not be decreased to less than 80% saturation at any time, as influenced by salinity or naturally occurring temperature variations. Where natural conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.		
pH:	The pH range shall be 6.5 to 8.6 and be within 0.2 pH units of that which would occur naturally.		
Enterococci:	35 per 100 ml (geometric mean indicator density) 130 per 100 ml (statistical threshold value)		

(o) Open Coastal Waters

The following apply specifically to open coastal waters:

Parameter	Median[1] not to exceed	Not to exceed more than 10% of the time	Not to exceed more than 2% of the time
Turbidity (NTU)	0.25	0.35	0.45
Total Phosphorus (µg/l as P)	15	30	50
Total Nitrogen (µg/l as N)	130	210	280
Chlorophyll a (µg/l)	0.25	0.50	0.75
Light Penetration[2] (feet)	130	110	90
[1]Refer to most recent version of "AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria" for median calculation method.			
[2] Light Penetration to exceed given values			
Ammonia:	The ammonia toxicity standards for fresh and marine waters are tabulated in Appendix A.		
Dissolved Oxygen:	Concentration of dissolved oxygen shall not be decreased to less than 80% saturation at any time, as influenced by salinity or naturally occurring temperature variations. Where natural conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.		
pH:	The pH range shall be 6.5 to 8.6 and be within 0.2 pH units of that which would occur naturally.		
Enterococci:	35 per 100 ml (geometric mean indicator density) 130 per 100 ml (statistical threshold value)		

(p) Ocean Waters

The following apply specifically to ocean waters:

Parameter	Median[1] not to exceed	Not to exceed more than 10% of the time	Not to exceed more than 2% of the time
Turbidity (NTU)	0.20	0.29	0.36

Total Phosphorus (µg/l as P)	11	23	35
Total Nitrogen (µg/l as N)	115	180	230
Chlorophyll a (µg/l)	0.18	0.40	0.65
Light Penetration[2] (feet)	150	132	120
[1]Refer to most recent version of "AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria" for median calculation method.			
[2] Light Penetration to exceed given values			
Ammonia:	The ammonia toxicity standards for fresh and marine waters are tabulated in Appendix A.		
Dissolved Oxygen:	Concentration of dissolved oxygen shall not be decreased to less than 80% saturation at any time, as influenced by salinity or naturally occurring temperature variations. Where natural conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.		
pH:	The pH range shall be 6.5 to 8.6 and be within 0.2 pH units of that which would occur naturally.		
Enterococci:	35 per 100 ml (geometric mean indicator density) 130 per 100 ml (statistical threshold value)		

(q) Implementation Provisions for Bacterial Characteristics

Compliance with numeric criteria shall be determined in accordance with the most recent version of "AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria".

Refer to the most recent version of "Territory of American Samoa Integrated Water Quality Monitoring and Assessment Report" for use support evaluation methodology including 303d listing.

(r) Biocriteria

The Territory shall preserve, protect, and restore water resources to as near their natural condition. The condition of these waterbodies shall be determined from measures of physical, chemical, and biological characteristics of each waterbody type, according to its designated use. As a component of these measures, the biological integrity of the benthic communities living within waters shall be assessed by comparison to reference conditions(s) with similar abiotic and biotic environmental settings that represent the optimal or least impacted condition for that system. Such reference conditions shall be those observed to support the greatest community evenness, diversity, and abundance of aquatic life as is expected to be or has been historically found in natural settings essentially undisturbed or minimally disturbed by human impacts, development, or discharges. This condition shall be determined by consistent sampling and reliable measures of selected indicator communities of flora and/or fauna and may be used in conjunction with other measures of water quality. Waters shall be of a sufficient quality to support a resident biological community as defined by metrics derived based upon reference conditions. These narrative biological criteria shall apply to fresh water, wetlands, estuaries, and coral reefs and other marine conditions based upon their respective reference conditions and metrics.

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0207 Zones of Mixing.

(a) Policy: Zone of mixing

Human activities may result in the practical need to discharge pollutants through point sources into the waters of the territory. And, because of technological, economic and other factors, it may not always be feasible to achieve an effluent quality that equals or exceeds the standards established herein at the point of discharge. Therefore, subject to the prohibitions, criteria and procedures set forth below, alternate water quality standards may be defined by the EQC in the immediate vicinity surrounding the point of discharge. The area within which the alternate standards apply shall be a zone of mixing. All applicable water quality standards shall be met at the boundary of any zone of mixing.

It is the policy of the EQC that zones of mixing shall only be granted upon a finding that no other practicable means of waste treatment and disposal are available. Further, it is the policy of the EQC that zones of mixing shall be limited to the smallest area possible.

(b) Criteria: Zone of Mixing

A zone of mixing can only be granted by the EQC if the application and the supporting information clearly shows that all of the following conditions and criteria have been met:

(1) It is in the public interest that a zone of mixing be granted to begin or continue the function or operation associated with the discharge;

(2) The proposed discharge does not substantially endanger human health or safety, or the environment;

(3) Compliance with the existing water quality standards at the point of discharge would produce serious economic hardships without equal or greater benefit to the public;

(4) Alterations generated by a proposed discharge do not disrupt the marine ecology of the receiving waters outside the zone of mixing;

(5) A zone of mixing shall not be granted for fresh surface waters, Nu'uuli Pala Lagoon, Fagatele Bay, that portion of Pago Pago Harbor described in §24.0205(e)(1)(C), or in those waters in Manu'a described in §24.0205(f)(2)(G);

(6) The size of any zone of mixing granted for any toxic pollutant shall not exceed the dimensions and volume of the zone of initial dilution and in no event shall the concentration of a toxic pollutant exceed chronic toxic levels at the boundary of the zone of initial dilution (ZID). Except for limited portions of the ZID, acute toxic standards shall be achieved within the ZID;

(7) The standards set forth in §24.0206(a)-(d) shall be met at the boundary of the zone of initial dilution;

(8) Alternate standards may be established within a zone of mixing for those standards set forth at §§24.0206(h),(j),(l),(m),(o), and (p); provided that the standards shall be met at the boundary of the zone of mixing;

(9) A zone of mixing shall not be granted if it would include the surface of the water body, any part of the shoreline, or any part of any barrier or fringing reef; and

(10) Further, the following shall be considered by the EQC in determining whether to grant or deny a zone of mixing:

(A) Protected uses of the body of water;

(B) Existing ambient conditions of the receiving water;

(C) Character of the effluent;

(D) Adequacy of the design of the outfall and diffuser system to achieve the desired dispersion and assimilation in the receiving waters; and

(E) Other pertinent policies, plans or territorial agencies.

(c) Procedures to Apply for Zone of Mixing

(1) The owner and/or operator of a point source of pollutants where the effluent quality of the discharge does not meet the applicable standards defined in §24.0206 at the point of discharge shall be in violation of these standards until such time as the EQC grants a zone of mixing upon receiving and acting upon an application for a zone of mixing from the discharger. At its discretion the EQC may grant extensions to discharges existing on the effective date of these standards, but in no event shall an existing discharge requiring a zone of mixing continue to discharge if a complete application for a zone of mixing has not been submitted to the EQC within 180 days of the effective date of these standards.

(2) Every application for a zone of mixing shall be accompanied by a complete and detailed description of:

(A) the nature of the discharge including, but not limited to, volume, effluent quality, discharge location and configuration, and treatment applied;

(B) existing ambient water quality conditions in the vicinity of the discharge;

(C) how present conditions compare to standards;

(D) proposed alternate water quality standards within the proposed zone of mixing;

(E) proposed dimensions and volume of the zone of mixing;

(F) a calculation of the dimensions and volume of the zone of initial dilution and the dilution ratio achieved at the

boundaries of the zone of initial dilution;

(G) the reasons why it is not practicable to achieve water quality standards for any specific parameter at the point of discharge or to eliminate the discharge and why the operation of the discharge is in the best interest of the territory; and

(H) such other information as the EQC prescribes.

(3) Each application for a zone of mixing shall be reviewed in light of descriptions, statements, plans, histories, and other supporting information as may be submitted in the application or upon the request of the EQC and the effect on the water quality standards established in §24.0206.

(4) A zone of mixing, or a renewal, may be granted upon the EQC's determination that the requirements of these standards have been met for the following time periods and conditions:

(A) If a zone of mixing is granted on the grounds that there is no technically and/or financially efficient means known or available for elimination or adequate prevention, control, or abatement of the discharge involved, it shall be only until the necessary means of prevention, control, or abatement becomes practicable and it shall be subject to the taking of substitute or alternative measures that the EQC may prescribe. No renewal of a zone of mixing granted under this section shall be allowed without a thorough review of known and available means of preventing, controlling of abating the discharge involved;

(B) The EQC may grant a zone of mixing for a period not exceeding 5 years, subject to be reopened if these water quality standards are revised during the 5-year period;

(C) Every zone of mixing granted under this section may include, but not be limited to, applicant requirements to perform effluent and receiving water sampling and testing as specified by the EQC and to report the results to the EQC. A program of research to develop practicable alternatives to the methods of treatment or control in use by the applicant may be required as a condition of the granting of the zone of mixing; and

(D) Upon application any zone of mixing granted pursuant to this section may be renewed periodically for periods not exceeding 5 years, provided, that:

(i) the applicant for renewal has met all of the conditions specified in the previously prescribed zone of mixing;

(ii) no renewal shall be granted except upon application. Any such application shall be made at least 120 days prior to the expiration of the current zone of mixing;

(iii) upon timely application for renewal, the terms and conditions of the original zone of mixing shall remain in effect until such time as the EQC acts upon the application for renewal; and

(iv) if no timely application for renewal is made, the zone of mixing shall automatically expire.

(5) The EQC, on its own motion or upon the application of any person, shall terminate a zone of mixing if, after a hearing, it is determined that:

(A) the water quality outside the zone of mixing does not meet the standards applicable to that water as given in §24.0206;

(B) the zone of mixing granted has interfered with any protected uses of the water area; or

(C) any NPDES permit condition has not been met and the discharger has failed to take prudent action to bring the discharge into compliance.

Such termination shall be made after a hearing held by the EQC in accordance with ASCA, Title 4, Chapter 10. Upon

such termination, the standards of water quality applicable shall be those established in §24.0206.

(6) The granting of a mixing zone shall be subject to approval by USEPA.

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0208 Pollution Control

(a) General

Any private or public development which would constitute a source of pollution to the waters of American Samoa shall provide the degree of waste treatment and/or operational and management practices necessary to preserve the quality of these waters.

(b) Land Disturbing Activities

Soil particles resulting from erosion on land involved in earth work, such as the construction of public works, highways, subdivisions, private developments, and recreational, commercial, or industrial developments, or the cultivation and management of agricultural lands, shall be prevented from entering any waters of American Samoa by application of management practices and standards in accordance with the most recent version of "American Samoa Erosion and Sediment Control Field Guide" adopted by AS-EPA and implemented by the person(s) responsible. These practices include, but are not limited to:

(1) Best management practices (BMPs) for cultivated agricultural lands. The responsible person(s) shall implement BMPs to assure removal of settleable solids originating from the cultivated area. In so doing, the responsible person(s) shall:

(A) Utilize guidelines established by AS-EPA and the erosion component of the Conservation Management System as defined in the Field Office Technical Guide of the US Department of Agriculture, the Natural Resources Conservation Service, and/or guidance from AS-EPA. In the alternative, the responsible person(s) may design and install a combination of management and physical practices to remove the settleable solids and associated pollutants in runoff delivered from the contributing area for storms up to and including a ten-year, 24-hour frequency.

(B) For cultivated areas in excess of one acre and/or within 100 feet of a surface water or such other areas as AS-EPA may specify, prepare and submit an erosion and sediment control plan to the AS-EPA for approval. The AS-EPA shall either approve, conditionally approve or disapprove the plan. Cultivation activities ongoing as of the effective date of these standards may not proceed for more than 90 days in the absence of an approved plan. No new activity may commence until such time as AS-EPA has approved the plan.

(2) BMPs for construction sites. The responsible person(s) implementing BMPs at construction sites shall:

(A) Assure that the annual total suspended solids loading from a construction site is no greater than the average annual loading prior to construction or after construction is complete and the site is permanently stabilized;

(B) Reduce annual average suspended solids loading by 80 percent based on total suspended solids loading from storms less than or equal to the 2-year/24-hour storm;

(C) For construction activities disturbing in excess of one acre or occurring within 100 feet of a surface water, ensure that the standards set forth in subdivisions (A) and (B) are met, or, in the alternative, prepare and submit a construction and postconstruction erosion and sediment control plan for approval by AS-EPA. For approval, the BMPs to be included in the plan must be those provided by the "Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters" (January 1993, USEPA OW) guidance received from AS-EPA or the Natural Resources Conservation Service, or other references, as approved by ASEPA. For construction activities disturbing in excess of one acre or within 100 feet of a surface water that are initiated after the effective date of these standards, the plan shall include measures to retain sediment on the site.

(c) On Site Disposal Systems

(1) No person may site, construct, or operate an on-site disposal system except in accordance with public health rules, building codes, water quality standards, and sewer use regulations of the Territory. Failure to do so shall constitute a violation of these standards.

(2) Installation of on-site disposal systems that reduce total nitrogen loading by 50 percent to ground water that is closely hydrologically connected to surface water will be required if conditions indicate that nitrogen limited surface waters may be adversely affected by excess nitrogen loading.

(d) Animal Waste Control

Improper waste disposal and contaminated runoff from confined animal facilities contribute nutrients, bacteria, viruses, other microorganisms, and sediment to streams, near shore and ground waters that lead to eutrophication, fish kills, and unsafe drinking water. In order to prevent these impacts, owners of confined animal facilities shall:

(1) Utilize animal waste control facilities that provide waste treatment, such as septic tanks and leach fields, waste storage ponds, waste storage structures, application of manure or runoff water to agricultural land, waste utilization, burial, or any other method determined to be environmentally acceptable by the Director of AS-EPA;

(2) Locate such facilities and their waste treatment facilities at least 50 feet from any wetland, marine water body, or Class II fresh surface water except for the allowed siting of septic tanks and drain fields in §24.0205 (b)(1)(B)(v), §24.0205 (b)(2)(B)(v) and (vi), and §24.0205(d)(2)(D); and at least 100 ft. from any well head;

(3) Control all waste such that it will not contaminate near shore waters, streams, or ground waters; and

(4) Continuously operate and maintain animal waste control facilities to ensure effective treatment.

(e) Storm Water Control

To prevent negative impacts to receiving waters and ground waters as a result of disruption in natural drainage patterns caused by development, the following standards shall be required to control storm water for all new development projects and new or modified land uses in accordance with the most recent version of "AS-EPA Guidance Manual for Runoff Control":

(1) A storm water control plan shall be completed for any construction activity or temporary or permanent development determined by AS-EPA to have a potential significant impact on receiving water quality or ground water quantity or quality. Such activities include, but are not limited to, confined animal facilities, construction project staging areas, highways, bridges, parking lots, structures, and facilities utilizing hazardous materials, pesticides, fertilizers or manure. The storm water control plan required by this section shall be submitted to AS-EPA and approved in writing prior to commencement of any construction activity for a new project and by the date specified by AS-EPA for existing land uses. The plan shall include the following:

(A) An estimate of the volume of storm water to be controlled, an assessment of the potential impacts of the storm water to be addressed, the design of BMPs and/or storm water controls, including a location map for the controls at the site, and a full description of the designs for the storm water controls.

(B) For nonstructural BMPs, a description of the management measures or methods to be used at the site to prevent the escape of pollutants to the receiving waters or ground waters. Nonstructural BMPs used in the plan shall be those contained in the "Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters" (January 1993, USEPA OW) or guidance from the AS-EPA, the Natural Resources Conservation Service, or other source as approved by AS-EPA.

(2) For the planning, development, and maintenance of new, modified, and existing

land uses, avoidance and prevention of water quality impacts is required. The methods to be utilized include, but are not limited to, BMPs such as site planning, proper use, storage, and disposal of hazardous materials, avoidance of sensitive areas, and proper preparation and maintenance of drainage structures, or others as required by AS-EPA

(f) Hydromodification

In order to prevent water quality degradation and preserve valuable in stream and riparian habitat, the following practices shall be required and/or implemented by ASEPA:

(1) All projects involving hydromodification shall be evaluated to determine their impacts on the physical and chemical characteristics of surface waters as well as in stream and riparian habitat, using appropriate models and methodologies.

(2) BMPs for use in the design and/or operation of new or existing hydromodification structures shall be identified and implemented by responsible persons. BMPs include, but are not limited to, protection of existing vegetation, minimization of loads on top of stream banks, hydraulic structures, check dam systems, grade control structures, vegetative cover, in stream sediment load control, soil bioengineering; proper stream bank and shoreline erosion control design, and use of setbacks, as provided in the (g) Guidance or other references approved by ASEPA.

(3) ASEPA shall work with other ASG departments and the private sector to ensure the proper operation and maintenance of hydromodification structures.

(g) Hazardous Materials and Chemical Control

Notwithstanding any other rules in force pertaining to hazardous materials management, the following BMPs shall be implemented at facilities or construction sites where hazardous materials such as petroleum products, solvents, paints, pesticides, fertilizers, soil additives, and other chemicals in excess are stored or utilized so that contamination of streams, near shore waters, and ground waters is minimized or prevented:

(1) Proper storage of hazardous materials. All hazardous materials and chemicals shall be stored within a covered shelter; an impervious berm with a capacity of 110 % of the largest container in the shelter shall be placed around the perimeter of the storage area; and appropriate construction measures shall be taken to prevent the runoff of pollutants;

(2) Proper labeling of chemicals and placement of warning signs in areas where pesticides are or have recently been applied;

(3) Proper disposal of hazardous chemicals or materials in conformance with AS-EPA guidelines and/or regulations promulgated by the EQC;

(4) Proper maintenance of vehicles, equipment, and machinery in confined areas specially designed to control runoff; and

(5) Proper application of fertilizers and manure using procedures recommended by the "Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters" (January 1993, USEPA OW) Natural Resources Conservation Service, or other source as approved by AS-EPA. Soil tests shall also be utilized to determine the specific nutrient needs at the site where such applications are performed in consultation with appropriate subject matter experts (e.g., Natural Resources Conservation Service).

(h) Dredging (Dredge and Dredge Spoil)

Dredging and dredged spoil discharges generally result in short-term disruption and do not represent continuous discharge that will affect beneficial uses over a long-term. Other inwater, construction-related activities, such as discharge from the dewatering of excavations and shoreline stabilization projects, can also cause short-term suspension of sediments similar to that caused by dredge and fill discharges. Effect zones may therefore be granted for dredging activities, other in-water construction-related activities, and the discharge of dredged or fill material provided that:

(1) all other requirements of this Part are met; and

(2) the proposed activity satisfies the policy of water quality antidegradation found in §24.0202 of this document.

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

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

(1) changing water circulation patterns;

(2) releasing nutrients that increase undesirable algal populations;

(3) releasing chemicals that adversely affect plants and animals;

(4) increasing turbidity levels, thereby reducing light penetration and hence photosynthesis; and

(5) changing the capacity of a vegetated shallow to stabilize bottom materials and decrease channel shoaling. Dredging and the discharge of dredged or fill materials may reduce the value of vegetated shallows as nesting, spawning, nursery, cover, and forage areas, as well as their value in protecting shorelines from erosion and wave actions. It may encourage the growth of nuisance vegetation.

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

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

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

(3) For activities which have the potential to adversely affect coral reproduction, a stoppage period of no less than 60 days, starting 5 days after the October full moon, shall be a condition of any permit or water quality certification. In determining whether an activity has the potential to affect coral spawning, the EQC shall consider all of the following: 1) the magnitude of the sediment plume generated by the proposed activity; 2) the most likely extent and direction(s) of drift of the sediment plume; 3) the type of sediment and its composition; and 4) the proximity of broadcast spawning coral species to the proposed activity and expected sediment plume;

(4) A specified distance up-current and down-current from the permitted activity at which applicable water quality criteria must be met (i.e, an effect zone). Effect zones for dredge

and fill activities shall be kept as small as practicable, and shall not exceed 300 feet downcurrent and 150 feet up-current. Down-current distance may be increased to 600 feet where typical currents can be shown to make the use of BMPs ineffective; and

(5) Any additional protective measures, limitations, monitoring, or effect zone requirements that the EQC identifies as being necessary to protect resources of concern; and

(6) Prior to commencing any dredging activity, authorization from AS-EPA must be received.

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

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0209 Water Quality Certifications

(a) Water Quality Certification Issuance

Water quality certifications may be issued by the EQC for any proposed activity that is found not to violate applicable water quality standards and Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended. A water quality certification is required by Section 401 of the Clean Water Act of any applicant for a federal license or permit to conduct any activity, including, but not limited to, the construction or operation of facilities which may result in a discharge into navigable waters of the United States.

(b) Procedures to Apply for Water Quality Certification – Contents of application

An applicant for certification shall submit a complete description of the discharge involved in the activity for which certification is sought, with a request for certification signed by the applicant. Such description shall include the following:

(1) The name and address of the applicant;

(2) A description of the facility or activity, and of any discharge into territorial waters which may result from the conduct of any activity including, but not limited to, the construction or operation of the facility, including characteristics of the discharge, and the location or locations at which such discharge may enter territorial waters;

(3) If applicable, a description of the function and operation of equipment or facilities to control discharges, including specification of the methods of control to be used;

(4) The estimated date or dates on which the activity will begin and end, and the date or dates on which the discharge(s) will take place;

(5) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharges; and

(6) The EQC may require the submission of additional information after a certification application has been filed. If a certification application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency. The EQC shall notify the applicant, in writing, within sixty days of the submission of an application if an application is incomplete or otherwise deficient. A description of the type of additional information necessary to complete the application or correct the deficiency shall be included with such a written notice. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of certification. EQC must act on the application after receipt of a completed application;

(c) Water Quality Certification – Notice and Hearing

The EQC will provide the public with the opportunity to comment on the water quality certification and may, upon request or its own initiative, provide the opportunity for public hearing(s) to consider the

issuance of water quality certification as specified in the Administrative Procedures Act (ASCA, Title 4, Chapter 10) and Environmental Quality Act (ASCA, Title 24, Chapter 1). The EQC shall inform the applicant, in writing, that such action has been taken. If, after considering the complete application, comments received during the public comment period, the record, and other information the EQC deems relevant, the EQC determines that applicable water quality standards will not be violated and the best practicable methods of control will be applied to a discharge which is the result of any activity, including but not limited to the construction and operation of facilities, then the EQC shall so certify.

(d) Contents of Water Quality Certification

(1) The name and address of the applicant;

(2) A statement that the EQC has examined the application made by the applicant and other information furnished to the licensing or permitting agency and bases its certification upon an evaluation of all such information contained in such application which is relevant to water quality certification;

(3) A statement that there is reasonable assurance that the activity will be conducted in a manner that will not violate water quality standards or the Clean Water Act;

(4) A statement of any condition which the EQC deems necessary or desirable with respect to the discharge or the activity that will affect water quality; and

(5) Such other information as the EQC may determine to be appropriate.

(e) Modification

The EQC may modify the certification prior to the issuance of the federal license or permit, after consideration of any additional information presented by the applicant, licensing or permitting agency or other government agencies or interested parties. The EQC shall provide the opportunity for public review and comment on any such modification.

(f) Water Quality Certification – Adoption of New or Revised Water Quality Standards

(1) All water quality certifications issued by the EQC will include a clause indicating that the certification is subject to amendment or modification if new or revised water quality standards are adopted by the EQC.

(2) Upon adoption or revision of water quality standards, the EQC will notify the licensing or permitting authority and request the licensing or permitting authority to amend or modify the license or permit to reflect the applicable water quality standards.

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0210 Enforcement, Compliance and Water Quality Monitoring

(a) Enforcement Authority

Enforcement of these standards shall be in accordance with the applicable provisions of the Environmental Quality Act, ASCA, Title 24, Chapter 1.

(b) Determination of Compliance With Ambient Standards

(1) Compliance with numeric water quality standards (§24.0206) shall be determined in accordance with the most recent version of "AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria".

(2) In situations where the naturally occurring conditions result in exceedance of a standard, the ambient condition shall constitute the applicable standard.

(c) Analytical Methods

Unless otherwise approved by the EQC and US -EPA or stipulated in these standards, analysis performed to determine compliance with these standards shall be those approved by US EPA.

(d) Sanitary Survey Requirements

If a monitoring station consistently exceeds the geometric mean standard for E. coli or enterococcus, the EQC shall conduct, or require a discharger to conduct, a survey to determine the source of the contamination. When a sanitary survey identifies a controllable source of indicator organisms associated with a discharge of sewage, the EQC shall take action to control the source. Waste discharge requirements shall require the discharger to conduct sanitary surveys when so directed by the EQC. Such requirements shall contain provisions requiring the discharger to control any controllable discharges identified in a sanitary survey.

e) Compliance Schedules for National Pollution Discharge Elimination System (NPDES) Permits

The use of compliance schedules for water quality-based effluent limitations (WQBELs) in National Pollutant Discharge Elimination System (NPDES) permits issued by the permitting authority is authorized by the EQC in accordance with the requirements under 40 CFR 122.47.

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

Appendix A
Ammonia Toxicity Standards for Fresh and Marine Waters

[SEE NEXT PAGE FOR APPENDIX A]

Water Quality Criteria for Ammonia in Freshwater (ACUTE)[1,2]

	Temperature (C°)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	51	51	51	51	51	51	51	51	51	48	44	40	37	34	31	29	27
6.6	49	49	49	49	49	49	49	49	49	46	42	39	36	33	30	28	26
6.7	46	46	46	46	46	46	46	46	46	43	40	37	34	31	29	26	24
6.8	44	44	44	44	44	44	44	44	44	41	38	35	32	29	27	25	23
6.9	41	41	41	41	41	41	41	41	41	38	35	32	30	27	25	23	21
7.0	38	38	38	38	38	38	38	38	38	35	32	30	27	25	23	21	20
7.1	34	34	34	34	34	34	34	34	34	32	29	27	25	23	21	19	18
7.2	31	31	31	31	31	31	31	31	31	29	26	24	22	21	19	17	16
7.3	27	27	27	27	27	27	27	27	27	26	23	22	20	18	17	16	14
7.4	24	24	24	24	24	24	24	24	24	22	21	19	17	16	15	14	13
7.5	21	21	21	21	21	21	21	21	21	19	18	16	15	14	13	12	11
7.6	18	18	18	18	18	18	18	18	18	17	15	14	13	12	11	10	9.3
7.7	15	15	15	15	15	15	15	15	15	14	13	12	11	10	9.3	8.6	7.9
7.8	13	13	13	13	13	13	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6
7.9	11	11	11	11	11	11	11	11	11	9.9	9.1	8.4	7.7	7.1	6.5	6.0	5.5
8.0	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.2	7.5	6.9	6.4	5.9	5.4	5.0	4.6
8.1	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	6.8	6.2	5.7	5.3	4.9	4.5	4.1	3.8
8.2	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	5.6	5.1	4.7	4.4	4.0	3.7	3.4	3.1
8.3	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.6	4.2	3.9	3.6	3.3	3.0	2.8	2.6
8.4	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	3.8	3.4	3.2	3.0	2.7	2.5	2.3	2.1
8.5	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.1	2.9	2.6	2.4	2.2	2.1	1.9	1.8
8.6	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.6	2.4	2.2	2.0	1.9	1.7	1.6	1.4
8.7	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2.0	1.8	1.7	1.5	1.4	1.3	1.2
8.8	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0
8.9	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.92	0.85
9.0	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1.0	0.93	0.85	0.78	0.72

[1] Source: Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater 2013. EPA-822-R-13-001

[2] Units: Total Ammonia Nitrogen (TAN). To convert these units see source document

Water Quality Criteria for Ammonia in Freshwater (CHRONIC)[1,2]

	Temperature (C°)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.0	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2
6.6	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	6.9	6.5	6.1	5.7	5.4	5.0	4.7	4.4	4.1
6.7	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	6.8	6.4	6.0	5.6	5.3	4.9	4.6	4.3	4.1
6.8	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.6	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4.0
6.9	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.5	6.1	5.7	5.3	5.0	4.7	4.4	4.1	3.9
7.0	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4.0	3.7
7.1	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6.0	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6
7.2	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.7	5.3	5.0	4.7	4.4	4.1	3.9	3.6	3.4
7.3	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5.0	4.7	4.4	4.1	3.9	3.6	3.4	3.2
7.4	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5.0	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3.0
7.5	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
7.6	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.2	3.9	3.7	3.5	3.2	3.0	2.9	2.7	2.5
7.7	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
7.8	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.4	3.2	3.0	2.8	2.6	2.4	2.3	2.1	2.0
7.9	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.0	2.8	2.6	2.4	2.3	2.1	2.0	1.9	1.8
8.0	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.6	2.4	2.3	2.1	2.0	1.9	1.7	1.6	1.5
8.1	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3
8.2	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
8.3	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1.0	0.96
8.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1.1	0.99	0.93	0.87	0.81
8.5	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1.0	0.95	0.89	0.83	0.78	0.73	0.69
8.6	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.97	0.91	0.85	0.80	0.75	0.70	0.66	0.62	0.58
8.7	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.82	0.77	0.72	0.68	0.64	0.60	0.56	0.52	0.49
8.8	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.70	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
8.9	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.60	0.56	0.52	0.49	0.46	0.43	0.41	0.38	0.36
9.0	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.51	0.48	0.45	0.42	0.40	0.37	0.35	0.33	0.31

[1] Source: Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater 2013. EPA-822-R-13-001

[2] Units: Total Ammonia Nitrogen (TAN). To convert these units see source document

	Temperature (°C)							
	0	5	10	15	20	25	30	35
pH	Salinity = 10g/kg							
7.0	270	191	131	92	62	44	29	21
7.2	175	121	83	58	40	27	19	13
7.4	110	77	52	35	25	17	12	8.3
7.6	69	48	33	23	16	11	7.7	5.6
7.8	44	31	21	15	10	7.1	5.0	3.5
8.0	27	19	13	9.4	6.4	4.6	3.1	2.3
8.2	18	12	8.5	5.8	4.2	2.9	2.1	1.5
8.4	11	7.9	5.4	3.7	2.7	1.9	1.4	1.0
8.6	7.3	5.0	3.5	2.5	1.8	1.3	0.98	0.75
8.8	4.6	3.3	2.3	1.7	1.2	0.92	0.71	0.56
9.0	2.9	2.1	1.5	1.1	0.85	0.67	0.52	0.44

pH	Salinity = 20g/kg							
7.0	291	200	137	96	64	44	31	21
7.2	183	125	87	60	42	29	20	14
7.4	116	79	54	37	27	18	12	8.7
7.6	73	50	35	23	17	11	7.9	5.6
7.8	46	31	23	15	11	7.5	5.2	3.5
8.0	29	20	14	9.8	6.7	4.8	3.3	2.3
8.2	19	13	8.9	6.2	4.4	3.1	2.1	1.6
8.4	12	8.1	5.6	4.0	2.9	2.0	1.5	1.1
8.6	7.5	5.2	3.7	2.7	1.9	1.4	1.0	0.77
8.8	4.8	3.3	2.5	1.7	1.3	0.94	0.73	0.56
9.0	3.1	2.3	1.6	1.2	0.87	0.69	0.54	0.44

pH	Salinity = 30g/kg							
7.0	312	208	148	102	71	48	33	23
7.2	196	135	94	64	44	31	21	15
7.4	125	85	58	40	27	19	13	9.4
7.6	79	54	37	25	21	12	8.5	6.0
7.8	50	33	23	16	11	7.9	5.4	3.7
8.0	31	21	15	10	7.3	5.0	3.5	2.5
8.2	20	14	9.6	6.7	4.6	3.3	2.3	1.7
8.4	12.7	8.7	6.0	4.2	2.9	2.1	1.6	1.1
8.6	8.1	5.6	4.0	2.7	2.0	1.4	1.1	0.81
8.8	5.2	3.5	2.5	1.8	1.3	1.0	0.75	0.58
9.0	3.3	2.3	1.7	1.2	0.94	0.71	0.56	0.46

[1]Ambient Water Quality Criteria for Ammonia (Saltwater)-1989, EPA 440/5-88-004, April 1989

	Temperature (°C)							
	0	5	10	15	20	25	30	35
pH	Salinity = 10g/kg							
7.0	41	29	20	14	9.4	6.6	4.4	3.1
7.2	26	18	12	8.7	5.9	4.1	2.8	2.0
7.4	17	12	7.8	5.3	3.7	2.6	1.8	1.2
7.6	10	7.2	5.0	3.4	2.4	1.7	1.2	0.84
7.8	6.6	4.7	3.1	2.2	1.5	1.1	0.75	0.53
8.0	4.1	2.9	2.0	1.40	0.97	0.69	0.47	0.34
8.2	2.7	1.8	1.3	0.87	0.62	0.44	0.31	0.23
8.4	1.7	1.2	0.81	0.56	0.41	0.29	0.21	0.16
8.6	1.1	0.75	0.53	0.37	0.27	0.20	0.15	0.11
8.8	0.69	0.50	0.34	0.25	0.18	0.14	0.11	0.08
9.0	0.44	0.31	0.23	0.17	0.13	0.10	0.08	0.07

pH	Salinity = 20g/kg							
7.0	44	30	21	14	9.7	6.6	4.7	3.1
7.2	27	19	13	9.0	6.2	4.4	3.0	2.1
7.4	18	12	8.1	5.6	4.1	2.7	1.9	1.3
7.6	11	7.5	5.3	3.4	2.5	1.7	1.2	0.84
7.8	6.9	4.7	3.4	2.3	1.6	1.1	0.78	0.53
8.0	4.4	3.0	2.1	1.5	1.0	0.72	0.50	0.34
8.2	2.8	1.9	1.3	0.94	0.66	0.47	0.31	0.24
8.4	1.8	1.2	0.84	0.59	0.44	0.30	0.22	0.16
8.6	1.1	0.78	0.56	0.41	0.28	0.20	0.15	0.12
8.8	0.72	0.50	0.37	0.26	0.19	0.14	0.11	0.08
9.0	0.47	0.34	0.24	0.18	0.13	0.10	0.08	0.07

pH	Salinity = 30g/kg							
7.0	47	31	22	15	11	7.2	5.0	3.4
7.2	29	20	14	9.7	6.6	4.7	3.1	2.2
7.4	19	13	8.7	5.9	4.1	2.9	2.0	1.4
7.6	12	8.1	5.6	3.7	3.1	1.8	1.3	0.90
7.8	7.5	5.0	3.4	2.4	1.7	1.2	0.81	0.56
8.0	4.7	3.1	2.2	1.6	1.1	0.75	0.53	0.37
8.2	3.0	2.1	1.4	1.0	0.69	0.50	0.34	0.25
8.4	1.9	1.3	0.90	0.62	0.44	0.31	0.23	0.17
8.6	1.2	0.84	0.59	0.41	0.30	0.22	0.16	0.12
8.8	0.78	0.53	0.37	0.27	0.20	0.15	0.11	0.09
9.0	0.50	0.34	0.26	0.19	0.14	0.11	0.08	0.07

[1]Ambient Water Quality Criteria for Ammonia (Saltwater)-1989, EPA 440/5-88-004, April 1989

Water Quality Criteria for Saltwater Aquatic Life Based on Total Ammonia mg/L

Criteria Continuous Concentrations

	Temperature (°C)							
	0	5	10	15	20	25	30	35
pH	Salinity = 10g/kg							
7.0	41	29	20	14	9.4	6.6	4.4	3.1
7.2	26	18	12	8.7	5.9	4.1	2.8	2.0
7.4	17	12	7.8	5.3	3.7	2.6	1.8	1.2
7.6	10	7.2	5.0	3.4	2.4	1.7	1.2	0.84
7.8	6.6	4.7	3.1	2.2	1.5	1.1	0.75	0.53
8.0	4.1	2.9	2.0	1.40	0.97	0.69	0.47	0.34
8.2	2.7	1.8	1.3	0.87	0.62	0.44	0.31	0.23
8.4	1.7	1.2	0.81	0.56	0.41	0.29	0.21	0.16
8.6	1.1	0.75	0.53	0.37	0.27	0.20	0.15	0.11
8.8	0.69	0.50	0.34	0.25	0.18	0.14	0.11	0.08
9.0	0.44	0.31	0.23	0.17	0.13	0.10	0.08	0.07

pH	Salinity = 20g/kg							
7.0	44	30	21	14	9.7	6.6	4.7	3.1
7.2	27	19	13	9.0	6.2	4.4	3.0	2.1
7.4	18	12	8.1	5.6	4.1	2.7	1.9	1.3
7.6	11	7.5	5.3	3.4	2.5	1.7	1.2	0.84
7.8	6.9	4.7	3.4	2.3	1.6	1.1	0.78	0.53
8.0	4.4	3.0	2.1	1.5	1.0	0.72	0.50	0.34
8.2	2.8	1.9	1.3	0.94	0.66	0.47	0.31	0.24
8.4	1.8	1.2	0.84	0.59	0.44	0.30	0.22	0.16
8.6	1.1	0.78	0.56	0.41	0.28	0.20	0.15	0.12
8.8	0.72	0.50	0.37	0.26	0.19	0.14	0.11	0.08
9.0	0.47	0.34	0.24	0.18	0.13	0.10	0.08	0.07

pH	Salinity = 30g/kg							
7.0	47	31	22	15	11	7.2	5.0	3.4
7.2	29	20	14	9.7	6.6	4.7	3.1	2.2
7.4	19	13	8.7	5.9	4.1	2.9	2.0	1.4
7.6	12	8.1	5.6	3.7	3.1	1.8	1.3	0.90
7.8	7.5	5.0	3.4	2.4	1.7	1.2	0.81	0.56
8.0	4.7	3.1	2.2	1.6	1.1	0.75	0.53	0.37
8.2	3.0	2.1	1.4	1.0	0.69	0.50	0.34	0.25
8.4	1.9	1.3	0.90	0.62	0.44	0.31	0.23	0.17
8.6	1.2	0.84	0.59	0.41	0.30	0.22	0.16	0.12
8.8	0.78	0.53	0.37	0.27	0.20	0.15	0.11	0.09
9.0	0.50	0.34	0.26	0.19	0.14	0.11	0.08	0.07

[1]Ambient Water Quality Criteria for Ammonia (Saltwater)-1989, EPA 440/5-88-004, April 1989

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording, Renumbering

[End Of Title 24 – Chapter 2]

TITLE 24 – CHAPTER 03 – QUARANTINE OF PETS AND AGRICULTURAL PRODUCTS AND ANIMALS

Sections

I. *GENERAL PROVISIONS*

24.0301 Definitions.

Whenever in this chapter, except 24.0319 through 24.0322, the following words, names, or terms are used they shall be construed, respectively, to means as set out in this section:

(a) "Cattle" means animals of the bovine species.

(b) "Domestic animal" means cattle, sheep, goats, other ruminants, swine, horses, asses, mules, dogs, and poultry.

(c) "Fresh fruits and vegetables" means the edible, more or less succulent portion of food plants in the raw or unprocessed state, such as oranges, grapefruit, tomatoes, peppers, lettuce, etc.

(d) "Packing materials" means unprocessed material of plant origin used for packing, such as hay and straw, and leaves of various plants such., as banana and breadfruit.

(e) "Plant pest" means any living stage of the numerous small invertebrate animals belonging to the phylum Arthropoda, any form of elongated invertebrate animals lacking appendages, commonly referred to as worms, any form of viruses, or any form of similar or allied organisms, which can directly or indirectly injure or cause disease in plants or parts thereof.

(f) "Plants or portions of plants" means leaves, twigs, or other portions of plants or plant litter or rubbish as distinguished from clean fruits and vegetables.

(g) "Poultry" means chickens, ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl, of all ages, including eggs for hatching.

(h) ''Ruminants" means animals which chew the cud, such as cattle, buffaloes, sheep, and goat.

(i) ''Seeds'' means the mature ovular bodies produced by flowering plants containing embryos capable of developing in to new plants by germination.

(j) ''Swine'' means the domestic hug only.

(k) ''Treatment" means fumigation or any other process involving the application of a gas, dry or moist heat, chemicals, low temperature, etc., excision of infected parts, or any other processing of plants or parts of plants including seeds, that is designed to eliminate or control any infestation or infection by a plant pest or animal pest.

History: Ex. Ord. 1. eff Jan 55, Plant and Animal Quar. Regs. Part, 1.

II. ANIMALS

24.0305 Compliance with animal rules required.

No person, firm, or corporation shall import or bring into American Samoa any animals, domestic or otherwise, except in accordance with the provisions of this chapter: nor shall any animals be handled or moved after physical entry into American Samoa and before final release from quarantine or any other form of governmental restriction or detention except in compliance with this chapter.

History: Ex. Ord. 1. eff Jan 55. Plant and Animals Quar. Regs. Part 2 § 1.

24.0306 Domestic animal import permit.

For domestic animals of all kinds intended for importation from any part of the world, the importer shall first obtain a permit from the department of agriculture, which shall be presented to the chief quarantine officer or his representative at the port of entry at the time of importation. Animals will not be eligible for entry if shipped from any foreign port other than that designated in the permit.

The import permit fee for all domestic animals shall be $2 per permit.

History: Ex.. Ord. 1. eff Jan 55. Plant and Animal Quar. Regs. Part 2 § 2: and Rule 6-84. eff 1 May. 84. (part).

24.0307 Ruminants, swine, dogs and cats, poultry, and meat.

(a) No ruminants or swine or fresh, chilled or frozen beef, veal, mutton, lamb, or pork may be imported from any country where rinderpest, foot-and-mouth disease, hog cholera, swine plague is known to exist, and no permits will be issued for such importation.

(b) All ruminants and swine offered for importation from any part of the world, except as provided in 24.0309 shall be accompanied by a certificate of a salaried veterinary officer or other competent authority of the government of the place of origin, stating that such animals have been kept in that place at least 60 days immediately preceding the date of movement therefrom and that the country, during such period, has been entirely free from foot-and-mouth disease, rinderpest, contagious pleuropneumonia, and surra; provided however that in the case of sheep, goats, and swine, the certificate, insofar as it relates to contagious pleuropneumonia, may specify freedom from such disease of the district of origin only. For domestic swine, the certificate shall also show that for 60 days immediately preceding the date of movement from the premises or origin no erysipelas has existed on the premises of origin or on adjoining premises.

(c) All poultry and poultry products, except as provided in 24.0309, offered for importation from any part of the world, shall be accompanied by a certificate of a salaried veterinary officer of the government of the place of origin stating that such poultry and their flock or flocks of origin were inspected on the premises of origin immediately before the date of movement from such place and that they were then found to be free of evidence of pullorum disease and other communicable disease, and that as far as it has been possible to determine, no case of European fowl pest (fowl plague) or Newcastle disease (avian pneumoencephalitis); occurred in the locality or localities where the poultry were kept during such period. All eggs for hatching offered for importation from any part of the world shall be accompanied by a certificate of a salaried veterinary officer or other competent authority of the government of the country of origin stating that flock or flocks of origin were found upon inspection to be free from evidence of pullorumn disease (hacillary white diarrhea) and other communicable disease and that as far as it has been able to determine such flock or flocks were not exposed to any such disease common to poultry during the preceding 60 days.

(d) All dogs and cats offered for importation from any part of the world, except as provided in 24.0306, shall be accompanied by a satisfactory certificate of a salaried veterinary officer or other competent authority of the government of the place of origin stating that the animal has been given a prophylactic dose of antirabies vaccine no later than 30 days prior to date of arrival at the port of entry.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Qual. Regs. Part 2 § 3.

Prior History: Water Quality Standards, eff Jul 73.

24.0308 Cattle test certificates required.

Except as provided in 24.0306 all cattle offered for importation from any part of the world shall be accompanied by a satisfactory certificate of a salaried veterinary officer or other competent authority of the government of the place of origin stating that the animals have been tested for tuberculosis and

brucellosis, with negative results within 30 days of the date of their exportation. The certificate shall give the dates and place of testing, names of the consignor and consignee, and a description of the cattle with breed, ages, and markings.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 4.

24.0309 Exemption for Western Samoa.

The director of agriculture may at his discretion waive the requirements of 24.0307 and 24.0308 for cattle, swine, poultry, cats, and dogs offered for importation from Western Samoa; provided, however, that such cattle; swine, poultry, cats, and dogs originated in Western Samoa and have not been in close contact with animals imported from other parts of the world without quarantine precautions.

History: Ex. Ord. 1. eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 5.

24.0310 Presentation of papers at entry.

The certificates and affidavits required by this chapter shall be presented by the master of the vessel or his agent to the chief customs officer at that port upon arrival of the animals at the port of entry.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 6.

24.0311 Inspection of animals at port of entry.

All animals offered for importation from any part of the world shall be inspected at the port of entry and such animals found to be free from disease, and not to have been exposed to contagious disease, will be admitted subject to the other provisions of this chapter. Animals found to be affected with a contagious disease or to have been exposed thereto shall be refused entry and unless returned to the country of origin, shall be destroyed. Such portions of the transporting vessel and of its cargo as have been exposed to those animals or their emanations shall be disinfected in such manner as may be considered necessary by the inspector in charge at the port of entry before the cargo is allowed to land.

History: Ex. Ord. 1. eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 7.

24.0312 Articles accompanying animals.

No litter or manure, fodder or other ailment, nor any equipment such as boxes, buckets, ropes, chains, blankets, or other things used on or about animals governed by this chapter shall be landed from any vessel except under such restrictions as the inspector in charge at the port of entry directs.

History: Ex. Ord. 1. eff Jan 55. Plant and Animal Quar. Regs. Part 2 § 8.

24.0313 Animals traveling through.

Masters of vessels transporting animals not intended for importation into American Samoa shall comply with all restrictions and requirements deemed necessary by the inspector in charge at the port of entry to prevent entry of such animals into American Samoa.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 9.

24.0314 Importation of animals by aircraft.

No animals, either domestic or otherwise, shall be imported or brought into American Samoa by airplane, except that they may be imported by that means when the importer has received prior permission in writing from the Governor to do so and only when the importer complies with all other requirements.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 10.

24.0315 Nondomestic animals-Prior permission.

Animals other than domestic may be imported or brought into American Samoa only when the importer has received prior permission in writing from the Governor and when the importer complies with any special rules that may be imposed.

History: Ex. Ord, eff Jan 55, Plant and Animal Quar. Part 2§ 11.

24.0316 Department of agriculture animal importation.

Nothing in this chapter shall be construed to prevent the department of agriculture from making importation of animals from any part of the world for breeding or other purposes, provided that suitable and adequate quarantine-safeguards are maintained.

History: Ex, Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 12.

24.0317 Dog and cat importation prohibited-Exceptions.

Importation of dogs or cats into American Samoa is strictly prohibited; provided, however, that:

(1) importation of dogs or cats into American Samoa is permitted from the following rabies free areas: Hawaii, New Zealand, and Australia, subject to terms and conditions from time to time established by the department of agriculture in

response to changing local and foreign problems of disease control ;

(2) importation of domestic dogs and cats into American Samoa is also permitted from the continental United States, the Territory of Guam, and the Pacific Island Trust Territories subject to terms and conditions from time to time established by the department of agriculture in response to changing local and foreign problems of disease control. Included therewith, with regard to dogs or cats from the continental United States, Guam, or Trust Territories, is mandatory quarantine in the state of Hawaii for a period to be determined by the department of agriculture;

(3) importation of domestic dogs and cats into American Samoa from Western Samoa shall be entirely subject to the terms and conditions of entry then in existence; the director of agriculture at any time is empowered to entirely prohibit entry of dogs or cats from Western Samoa or to allow entry upon such conditions as he then sees fit;

(4) the director of agriculture shall, due to the unique and delicate nature of disease control on a small island, propagate from time to time and as he sees fit, terms and conditions of entry into American Samoa of domestic dogs and cats. The director shall at all times make available to the public a copy of this section and the terms and conditions of entry aforementioned; furthermore copies of both shall be provided to the department of manpower resources as well as to all employers hiring off-island personnel at their request, as well as to all air carriers doing business in the territory;

(5) compliance with the provisions of this section and the terms and conditions of entry shall be the sole responsibility of the dog or cat owner. Any dog or cat arriving in American Samoa without prior, complete compliance with the terms and conditions of entry then in existence shall be subject to immediate return to its place of origin at the owner's expense, or, in the alternative, if the owner is unavailable or unable or unwilling to bear the cost of returning the dog or cat to its place of origin, shall be immediately destroyed.

History: Rule 2-78, eff 4 Apr 78, § 3 (b) (l);and Rule 8-78, eff 21 Sep 78, § 3.

24.0318 Miscellaneous pet importation prohibited.

(a) miscellaneous pets such as lizards, snakes, turtles, frogs, tropical fish, parrots, cage birds, monkey, hamsters, rabbits, and similar animals which are regarded as pets are prohibited from being imported into American Samoa;

(b) the director of agriculture or his authorized representative will determine whether an animal falls under the miscellaneous pets category if the animal is not enumerated in subsection (a) of this section.

History: Rule 2-78, eff 4 Apr 78, § 3 (b)(2), (3).

24.0319 Keeping on aircraft and vessels.

It is illegal to maintain any animal or bird aboard any vessel or aircraft in American Samoa for more than 48 hours. Animals or birds must be either destroyed under the supervision of the department of agriculture, shipped off the islands on the first available flight at the owner's expense, or the vessel or aircraft must leave American Samoa after the 48-hour period. During the time the vessel or aircraft is in port, all animals or birds must be kept under strict quarantine aboard the vessel or aircraft. However, if a bond is posted by the owner for the animal and this is approved by the department of agriculture, then the animal may be maintained in the vessel or aircraft. The director of agriculture or his authorized representative will determine the bond on any animal. If the animal is found off of the vessel or aircraft, it may he destroyed by the department of agriculture and the bond forfeited.

History: Rule 2-78, eff 4 Apr 78, § 3 (b) (4).

24.0320 Domestic animal importation.

All domestic animals, including ruminants (cattle, buffalo, sheep, and goats), horses, mules and asses, swine, and domestic poultry (chickens, ducks, geese, turkeys, pigeons, doves, quail, etc.) may be imported into American Samoa subject to department of agriculture restrictions and health certification.

History: Rule 2-78, eff 4 Apr 78. § 3 (b) (5).

III. PLANTS

24.0325 Compliance with plant, fruit, and vegetable rules required.

No person, firm, or corporation shall import or offer for entry into American Samoa any plants, plant materials, fruits, or vegetables, or plant products except in accordance with the provisions of this chapter, nor shall any of the above be handled or

moved after physical entry into American Samoa before final release from quarantine or other form of governmental restriction or detention except in compliance with this chapter.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar, Regs. Part 3 § 1.

24.0326 Fruits and vegetables-Fruit fly and citrus disease restrictions.

(a) The importation of fresh fruits, susceptible vegetables, and seeds covered with pulp, is prohibited from areas where the oriental fruit fly (Dacus dorsalis) and the Mediterranean fruit fly (Certitis copitata) or other injurious fruit fly species are known to occur. Such fruits and vegetables may however, be entered if accompanied by certification of competent authority in the country of origin that it has been subject to an approved treatment at point of origin and subsequently protected from reinfestation until exportation has been effected.

(b) The importation of citrus fruits is prohibited from areas where the organism causing citrus canker, cancrosis "B", and sweet orange scab are known to occur, and shall be permitted entry only when accompanied by a certificate of competent authority in the country of origin stating that it originated in an area free from the aforesaid diseases.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 3 § 2.

24.0327 Prohibited plants, plant parts, and seeds,

Except as indicated, the following plants, plant parts, and seeds are prohibited entry into American Samoa:

(a) All coconut plants or parts thereof, except that nuts may be permitted entry when fumigated with methyl bromide at the port of origin;

(b) All rice plants and parts thereof, except milled rice for human consumption;

(c) All pineapple and related plants except within the area embraced by the South Pacific Commission;

(d) All citrus and related plants or parts thereof for propagation except from areas known to be free from citrus canker or quick decline (Tristezs);

(e) All rubber plants and parts thereof from areas where the American leaf disease (Dothidella ulei) occurs, and from other areas, only in the form of seed or budwood;

(f) All cacao plants and parts thereof from areas where witch's broom (Marasmium fernicious) or swollen shoot disease occur;

(g) All plants of sugarcane and other species of Saceharurn or parts thereof;

(h) All plants of banana and other Musa species or parts thereof, from areas where panacea disease (Fusarium oxisporum var. cubense) or bunchy top virus disease occur;

(i) All coffee plants and parts thereof from areas where the coffee bean borer (Stephenoderes coffee) exists, or where the blockwood disease of robusta coffee (Thielaviopsis neocaledonise) is known to occur.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 3 § 3.

24.0328 Permit for plant material importation

Any person lirin or corporation wishing to offer for entry into American Samoa any plant material shall first obtain a permit from the department of agriculture for their importation. This permit shall detail the amount and kind of plant, point of origin method of transportation and type of treatment required, if any at point of origin. No plants or plant material shall be permitted entry if obtained from other than the indicated point of origin.

The schedule of fees for permits under this section shall be as follows:

(1) Import permits for plants and plant products:

(A) Individual permits- $3 permit;

(B) Block permits- $25 per year;

(C) For any access items not included in the import port, there shall be levied a fine of $5 per item upon arrival.

(2) Phytosanitary certificate-$1 per permit.

History: Ex. Ord. I. eff Jan 55. Plant and Animal Quar. Regs. Part 3 § 4; and Rule 6-84. eff 1 May 84. (part).

24.0329 Certification of plants and materials.

All plants and plant materials offered for entry shall be accompanied by a certificate issued by competent authority of the country of origin, listing the contents of the shipment, their locality and type of treatment, if any, and stating that the plant material covered by

certificate was examined and found, to the best of his knowledge, apparently free from injurious pests and diseases. The original of this certificate shall be presented to the inspector of the department of agriculture upon or before the arrival of the shipment at the port of entry.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 3 § 5.

24.0330 Examination at entry of plants, parts, and products.

All plants, plant parts, or plant products offered for entry into American Samoa shall be subject to examination by an authorized inspector. If such a consignment should be found to be infested with an injurious insect or disease, he may refuse entry to all or a portion of the consignment. Those plants, plant parts, or products refused entry shall be subject to disposal under direction of the director, department of agriculture, by meturn to the country of origin or confiscation and destruction, or admittance under such treatment and quarantine safeguards as he deems necessary. All costs incident to such disposition, other than the services of the inspector, shall be borne by the importer.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 3 § 6.

24.0331 Department of agriculture importation.

Nothing in this article shall be construed to prevent the department of agriculture from importing plants, plant materials, and products from any part of the world for experimental purposes under such quarantine safeguards as the director of the department of agriculture prescribes.

History: Ex. Ord. 1. eff Jan 55, Plant and Animal Quar. Regs. Part 3 § 7.

24.0332 Emergency quarantine rules.

The director, department of agriculture, shall have the authority, subject to later confirmation by the Governor, to impose emergency quarantine rules in situations not covered by this chapter and when the situation in his opinion, so warrants.

History: Ex. Ord. 1, eff Jan 55. Plant and Animal Quar. Regs. Part 3 § 8.

IV. SPECIAL RULES

24.0335 Refuse disposal by vessels and aircraft.

(a) Vessels and aircraft entering American Samoa from foreign ports are prohibited from dumping garbage , trash and other refuse into the harbors and protected waters of the islands, and from putting such garbage ashore for disposition except under the following conditions:

(1) The presence of an agricultural quarantine inspector to supervise the loading and unloading of any and all garbage trash and other refuse containers, fumigation of commodities and certification of commodities to export shall be required.

(2) If adequately screened and protected incinerators are available ashore, garbage and trash from vessels entering from foreign ports may be landed for destruction by burning under the supervision of agricultural quarantine inspectors or other appropriate port authorities. Otherwise, garbage and trash shall be accumulated aboard the vessel in covered containers for the duration of the stay of the vessel, and subsequently dumped at sea upon resumption of the voyage.

(3) All garbage and trash from land-based aircraft entering American Samoa from a foreign area shall be placed in an insect-proof container while on board the plane, and, under the supervision of agricultural quarantine inspectors or other appropriate port authorities, be taken to an adequately screened and protected incinerator where it shall be destroyed by burning.

(4) There shall be a fee of $7.50 (per inspector) per hour assessed against each vessel and aircraft that shall enter American Samoa and do any of the acts mentioned in this regulation.

(b) Garbage containing animal and plant products:

(1) All garbage containing animal and plant products from vessels or aircraft must be held on board the vessel or aircraft while in port. In special circumstances and under the supervision of an agriculture quarantine inspector, the garbage may be placed inside an insect-proof container and a unloaded and incinerated or sterilized. The director of agriculture or his authorized representative may determine what are special circumstances. The costs of transporting incinerating and sterilizing the garbage, which shall be $7.50 (per inspector) per hour, will be charged to the vessel or aircraft.

(2) All galley garbage from vessels and aircraft can be considered as containing animal and plant products. This rule shall be strictly

enforced on all vessels or aircraft arriving in American Samoa.

(3) "Garbage'' means all waste material derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material on board any means of conveyance, and including food scraps, table refuse galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers or crews' quarters, dining rooms, or any other areas on vessels, aircraft, or other means of conveyance.

History: Ex. Ord. 1. eff Jan 55. Plant and Animal Quar. Regs.,. Part 4 § 1: Rule 2-78. eff 4 Apr 78. § 3(a); Rule 6-84. eff 1 May 84. (part).

24.0336 Ratguards on vessels.

All vessels entering American Samoa from foreign ports shall place adequate ratguards on all lines, cables, or hawsers which lead ashore to prevent the entry of ratborne diseases.

History: Ex. Ord. 1. eff Jan 55, Plant and Animal Quar. Reps. Part 4 § 2.

24.0337 Aircraft spraying.

All aircraft entering American Samoa from a foreign area shall. 30 minutes prior to landing, treat all internal passenger and cargo spaces for insects with an aerosol spray formula approved by the U. S. Public Health Service.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 4 § 3.

24.0338 Packing material prohibited-Exceptions.

All packing materials are prohibited entry into American Samoa except as follows:

(a) When such materials have been treated or manufactured so as to exclude the possibility of harboring injurious pests and diseases:

(b) When the unopened cases containing packing materials are first subjected to an approved precautionary treatment to kill insects and their eggs. Such cases must be opened in the Customs House, the packing materials removed and destroyed by burning at which time the consignment may be released from quarantine by the customs officer.

History: Ex. Ord. 1. eff Jan 55. Plants and Animal Quar. Regs., Part 4 § 4.

24.0339 Feed and materials-Prohibited when-Certification.

The importation of any straw, fodder, or chaff for animal feeding is prohibited from any area from which ruminants, swine, equines, and poultry are also prohibited entry. Importation of feeds and feed materials from all other areas shall be admitted only when accompanied by certification by competent authority of the country of origin that the area where produced is free from cattle ticks and infectious diseases of livestock.

History: Ex. Ord. 1, eff Jan 55. Plant and Animal Quar. Regs. Part 4 § 5.

24.0340 Feed and materials-Approved treatment required when.

All hay, straw, fodder, and other material for animal or poultry feed shall be subject to fumigation or other approved treatment at the expense of the consignee at the port of entry when, in the opinion of the director of agriculture, it is necessary to prevent entry of injurious or undesirable insect pests.

History: Ex. Ord. 1, eff Jan 55, Plants and Animal Quar. Regs. Part 4 § 6.

[End Of Title 24 – Chapter 3]

TITLE 24 – CHAPTER 04 – GIANT AFRICAN SNAIL

Sections:

Prior History: Emergency Rule 6-80, eff 5 May 80.

24.0401 Authority.

The rule codified in this chapter is adopted under the authority of 24.0102 (1) A.S.C.A.

History: Rule 19-80, eff 1 Sep 80, § 1.

24.0402 Finding of public health nuisance.

It is specifically found that the giant African snail, in view of increasing numbers and the numerous infested areas listed in Appendix A to this chapter, is harmful to agricultural products, food items, and water supplies and thereby endangers health and contaminates the environment, and constitutes a public health nuisance as defined in 25.0101 (19) A.S.C.A.

History: Rule 19-80, eff 1 Sep 80, § 2.

24.0403 Purpose.

The purpose of this chapter is to control the spread of the giant African snail from the infested areas listed in Appendix A to this chapter to uninfested areas in American Samoa, and to facilitate the abatement and removal of the snail from these areas.

History: Rule 19-80, eff 1 Sep 80, § 3.

24.0404 Moving materials to and from infested areas.

(a) No person shall move by any means whatsoever soil, rocks, lumber, pipes, cinders, or any other material to or from the infested areas listed in Appendix A without providing the director of agriculture at least 7 days prior notice of the intended movement. The director of agriculture is authorized to inspect the materials prior to movement and to determine and carry out such treatment or other means as is necessary to remove and destroy the African snails found in the materials.

(b) For purposes of this chapter, "person" means any natural person, whether a private individual or public employee or official, partnership, or other association, corporation, or government agency.

History: Rule 19-80, eff 1 Sep 80, § 4.

24.0405 Violation-Penalty.

Pursuant to 25.0110 A.S.C.A., any person who violates 24.0404 (a) shall, upon conviction, be subject to imprisonment not to exceed 1 month or a fine of not more than $100, or both.

History: Rule 19-80, eff 1 Sep 80, § 5.

24.0406 Abatement and removal.

The director of agriculture is further authorized to exercise the authority of the director of health to abate and remove giant African snails under the provisions of 25.0107, 25.0108, and 25.0109 A.S.C.A.

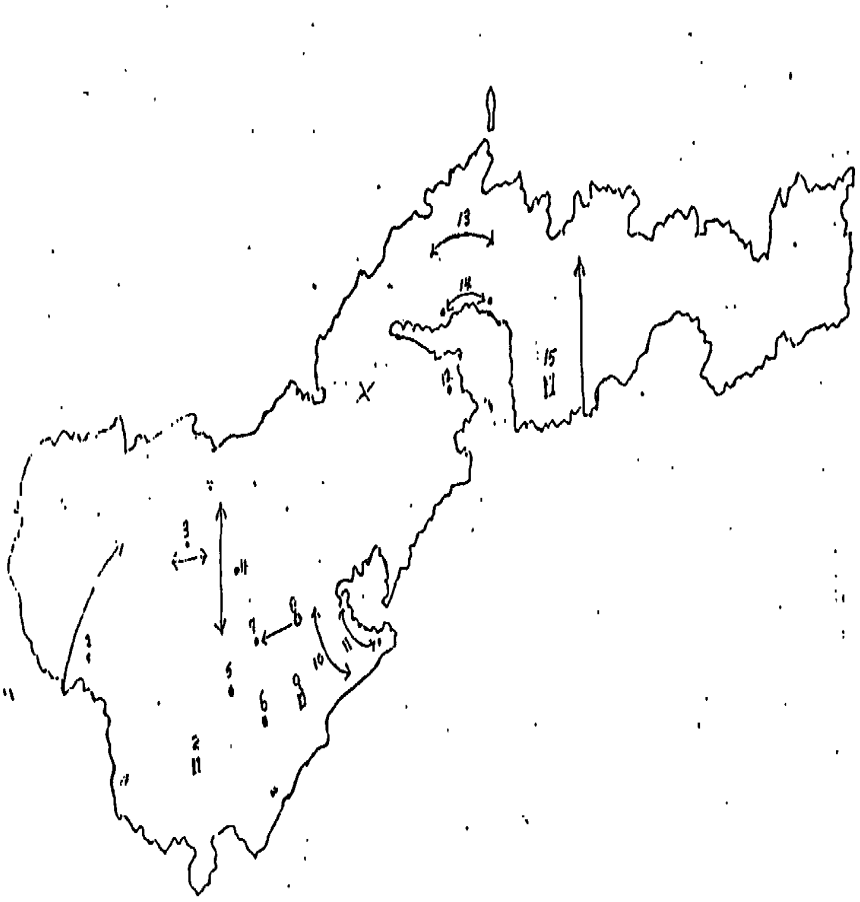
History: Rule 19.80, eff 1 Sep 80, § 6.

24.0407 Appendix A-Giant African snail-infested areas.

Giant African snail-infested areas include all of the central part of the island of Tutuila from Leone Village to the west and Laulii to the east, extending to the north toward the mountains. Heavy concentrations of African snails are found in the following areas:

1. Auma-Leone;
2. Futiga ASG Dumping Site;
3. Aasufou-Aoloau;
4. Mapusaga Fou-Tafeta;
5. Pavaiai;
6. Faleniu;
7. Mesepa;
8. Community College-Malaeimi;
9. Ottoville-sludge dumping area;
10. Airport Road-public works construction;
11. Tafuna Housing-correction facility;
12. Fagaalu;
13. Mt. Alava;
14. Satala-Atuu;
15. Onesosopo Public Dump.

[MAP OF INFESTED SITES]



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24.0407

[End Of Title 24 Chapter 4]

TITLE 24 – CHAPTER 05 – AIR EMISSION RULES & REGULATIONS

Sections

24.0501 Definitions.

As used in these Standards and Regulations:

(1) "Air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes odorous substances and any precursors to the formation of any pollutant, to the extent that the agent or combination of such agents is identified in any federal or territory rules as precursors.

(2) "Air pollution" means the presence in the outdoor atmosphere of one or more substances in such quantities and duration as is or tends to be injurious to human health or welfare, plant or animal life or property, or would unreasonably interfere with the enjoyment of life or property.

(3) "Air pollution control equipment" means equipment or a facility of a type intended to eliminate, prevent, reduce, or control the emissions of any regulated or hazardous air pollutant to the atmosphere.

(4) "Air pollution emission source," "emission source," "stationary air pollution source" or "source" means any piece of equipment or activity at a building, structure, facility, or installation that emits or may emit any air pollutant. For this definition, "Building, structure, facility, or installation" means all of the air pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except for the activities of any vessel which are not regulated under the federal Clean Air Act. Air pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e. which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1987).

(5) "Allowable emissions" means the emissions of an air pollution emission source calculated using the maximum rated capacity of the source, or, if the source is subject to federally enforceable limits which restrict the operating rate, capacity, or hours of operations, or any combination of these, then the maximum of the source, considering federally enforceable limits, and the most stringent of the following:

(A) The applicable standards set forth in 40 CFR Parts 60, 61, and 63;

(B) Any American Samoa implementation plan emission limitation, including those with future compliance dates; and

(C) The emission rates specified in a federally enforceable permit condition, including those with future compliance dates.

(6) "Applicant" means any person who submits an application for a permit.

(7) "ASEPA" means the American Samoa Environmental Protection Agency or its authorized agents.

(8) "ASCA" means the American Samoa Code Annotated.

(9) "Best available control technology" means an emissions limitation including a visible emission standard based on the maximum degree of reduction for each pollutant subject to regulation approved pursuant to the Clean Air Act which would be emitted from any proposed air pollution emission source or modification which the executive secretary, on a cases-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard promulgated pursuant to 40 CFR Parts 60, 61, and 63. If the executive secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

(10) "BTU" means British thermal unit.

(11) "CFR" means the Code of Federal Regulations.

(12) "Clean Air Act" means the Clean Air Act of 1963, as amended, 42 U.S.C. Section 7401, et. seq.

(13) "Commenced" as applied to construction of or modification to an air pollution emission source, means that the owner or operator, has all necessary preconstruction approvals or permits and either has:

(A) Begun, or caused to begin a continuous program of actual operation on-site construction of the source; or

(B) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual operation or construction of the source.

(14) "Commission" means the Environmental Quality Commission.

(15) "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(16) "Compliance Plan" means a plan which includes a description of how an owner or operator proposes to comply with all applicable requirements of these Standards and Regulations and includes a schedule of compliance and a schedule under which the owner or operator will submit progress reports to the Commission.

(17) "Construction" means a physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of an emissions unit which would result in a change in actual emissions.

(18) "Director of ASEPA" or "director" means both the director of the ASEPA and the executive secretary of the environmental quality commission or his authorized agents.

(19) "Draft permit" means the version of a permit for which the director offers public notice, including the method by which a public hearing can be requested, and an opportunity for public comment pursuant to section 24.0539.

(20) "Emission" means the act of releasing or discharging air pollutants into the ambient air from any source or an air pollutant which is released or discharged into the ambient air from any source.

(21) "Emission limitation" means a requirement established by the director of ASEPA or USEPA Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(22) "Emissions unit" means any part or activity of an air pollution emission source that has the potential to emit any regulated or hazardous air pollutant.

(23) "Executive secretary" means both the executive secretary of the Environmental Quality Commission and the director of the ASEPA or his authorized agents.

(24) "Existing air pollution emission source" means an air pollution emission source that has received an air pollution control permit, commenced construction or a modification, or was in operation prior to the effective date of these Standards and Regulations.

(25) "Federally enforceable" means all limitations and conditions which are enforceable by the USEPA Administrator or any person commencing an action under 42 U.S.C. 7604, including those requirements developed pursuant to 40 CFR Parts 60, 61, and 63; requirements within the American Samoa Implementation Plan; or any permit requirements established pursuant to 40 CFR 52.21 or all permit terms and conditions in a stationary air pollution source permit except those specifically designated as not federally enforceable or regulations approved pursuant to 40 CFR Part 51 Subpart I, and also including operating permits issued under an EPA-approved program that is incorporated into these standards and regulations and expressly requires adherence to any permit issued under such a program.

(26) "Fuel burning equipment" means a furnace, boiler, apparatus, stack, and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by heat transfer.

(27) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(28) "Hazardous Air Pollutant" or "HAP" means those hazardous air pollutants listed in or promulgated pursuant to Section 112(b) of the federal Clean Air Act and any other hazardous air pollutants referenced in section 24.0541 of these standards and regulations.

(29) "mg/m3" means milligrams per cubic meter.

(30) "Month" means a calendar month.

(31) "NAAQS" means the National Ambient Air Quality Standards contained in 40 CFR Part 50.

(32) "National Emission Standards for Hazardous Air Pollutants" means the federal emission standards contained in 40 CFR Parts 61 and 63.

(33) "New air pollution emission source" means an air pollution emission source that commenced construction or modification on or after the effective date of these Standards and Regulations.

(34) "Opacity" means a condition which renders material partially or wholly impervious to rays of visible light and causes obstruction of an observer's view.

(35) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an air pollution emission source.

(36) "Particulate matter" means any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.

(37) "Permit" means written authorization from the Commission, and as applicable, the USEPA Administrator, to construct, modify, relocate, or operate any regulated or hazardous air pollutant source.

(38) "Permit renewal" means the process by which a permit is reissued at the end of its term.

(39) "Person" means an individual, firm, corporation, association, partnership, consortium, subdivision of the Territory, or, to the extent they are subject to these Standards and Regulations,

the United States or any municipality, or any interstate body.

(40) "PM10" means particulate matter with the aerodynamic diameter less than or equal to a nominal ten micrometers.

(41) "Potential annual heat input" means the product of the maximum rated heat input capacity (megawatts or million BTU per hour) times 8760 hours per year.

(42) "Potential to emit" means the maximum capacity of an air pollution emission source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Commission and the USEPA Administrator.

(43) "Reconstruction" means the replacement of components at an existing air pollution emission source to such an extent that the fixed capital cost of the new components exceeds fifty per cent of the fixed capital cost that would be required to construct a comparable entirely new air pollution emission source.

(44) "Regulated air pollutant" means:

(A) Nitrogen oxides or any volatile organic compound;

(B) Any air pollutant for which a national or American Samoa ambient air quality standard has been promulgated;

(C) Any air pollutant that is subject to a standard promulgated under section 111 of the Clean Air Act;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act;

(E) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Clean Air Act, including sections 112(g), (j), and (r) of the Clean Air Act, including the following:

(i) Any pollutant subject to requirements under section 112(j) of the Clean Air Act. If the date established pursuant to section 112(e) of the Clean Air Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Clean Air Act; and

(ii) Any other pollutant subject to a standard or requirement in these Standards and Regulations.

(45) "Responsible official" means:

(A) For a corporation: 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, or an authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 100 persons or have gross annual sales or expenditures exceeding $5 million; or

(ii) The delegation of authority to such representative is approved in advance by the executive secretary;

(B) For a partnership or sole proprietorship: a general partner or the proprietor, respectively, or

(C) For a municipality, state, federal, or other public agency: a principal executive officer, ranking elected official, or an authorized representative is approved in advance by the director. For the purposes of these Standards and Regulations, a principal executive officer of a federal agency having responsibility for the overall operations of a principal geographic unit of the agency.

(46) "Risk Assessment" means the process of determining the potential adverse health effects of human exposure to environmental hazards. The process includes hazard identification, dose-response assessment, exposure assessment and risk characterization by quantifying the magnitude of public health problem that results from the hazard.

(47) "Significant increase" means, in reference to a net emissions increase or the potential of a source to emit:

(A) A rate of emissions that would equal or exceed any of the following pollutant and emission rates:

(1) Carbon monoxide: 100 tpy;

(2) Nitrogen oxides: 40 tpy;

(3) Sulfur dioxide: 40 tpy;

(4) Particulate matter: a total of 25 tpy of particulate matter of all sizes or 15 tpy of PM10;

(5) Ozone: 40 tpy of volatile organic compounds;

(6) Lead: 0.6 tpy;

(7) Asbestos: 0.007 tpy;

(8) Beryllium: 0.0004 tpy;

(9) Mercury: 0.1 tpy;

(10) Vinyl Chloride: 1 tpy;

(11) Fluorides: 3 tpy;

(12) Sulfuric acid mist: 7 tpy;

(13) Hydrogen sulfide (H2S): 10 tpy;

(14) total reduced sulfur (H2S): methyl mercaptan, dimethyl sulfide, and dimethyl disulfide: 10 tpy;

(15) Reduced sulfur compounds (H2S, carbon disulfide and carbonyl sulfide): 10 tpy;

(16) Municipal waste combustor organics: 3.2 grams per year (3.5 x 10-6 tpy) measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans;

(17) Municipal waste combustor metals: 14 megagrams per year (15 tpy) measured as particulate matter; or

(18) Municipal waste combustor acid gases: 36 megagrams per year (40 tpy) measured as sulfur dioxide and hydrogen chloride;

(B) Any net emissions increase of a pollutant or the potential of a source to emit a pollutant subject to regulation pursuant to the Clean Air Act that paragraph (1) does not list; and

(C) Notwithstanding paragraph (1), any emissions increase associated with a major pollution emission source or major modification, which would be constructed within ten kilometers of a Class I area, and have an impact on such area equal to or greater than on mg/m3 (twenty-four hour average).

(48) "Smoke" means the gaseous products of burning carbonaceous materials made visible by the presence of small particles of carbon.

(49) "Source" means property, real or personal, which emits or may emit any air pollutant.

(50) "Stack" means a point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

(51) "Stationary air pollution source permit" means written authorization from the executive secretary to construct, modify, relocate, or operate an air pollution emission source.

(52) "Tpy" means tons per year.

(53) "Upon program approval" means the date the Territory of American Samoa stationary air pollution source permit program is granted full or interim approval by the USEPA Administrator pursuant to 40 CFR Part 69 and thereafter.

(54) "USEPA" means the United States Environmental Protection Agency.

(55) "USEPA Administrator" means the Administrator of the USEPA or his or her designee.

(56) "VOC" means volatile organic compound.

(57) "Volatile Organic Compound" means a compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound other than methane; ethane; methylene chloride (dichloromethane); 1,1,1 trichloroethane (methyl chloroform); 1,1,1 tri-chloro-2,2,2 trifluorothane (CFC – 113);

trichlorofluoromethane (CFC- 11); dichlorodifluoromethane (CFC- 12); chlorodifluoromethane (CFC- 22); trifluoromethane (FC- 23); trfluoro-2,2¬dichloroethane (HCFC- 123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142B); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(A) Cyclic, branched, or linear, completely fluorinated alkanes;

(B) Cyclic ,branched, or linear, completely fluorinated ethers with no unsaturations;

(C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

History: 2005

24.0502 Prohibition of air pollution.

No person, including any public body, shall engage in any activity which causes air pollution or causes or allows the emission of any regulated or hazardous air pollutant without first securing a permit from the Commission when required by these Standards and Regulations.

History: 2005

24.0503 Conflicts in laws or rules.

In the event any federal or territory laws, rules, or regulations are in conflict with the provisions of these Standards and Regulations, the most stringent requirement shall apply.

History: 2005

24.0504 Certification.

Every application form, report, compliance plan, or compliance certification submitted pursuant to these standards and regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required pursuant to these Standards and Regulations shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

History: 2005

24.0505 Public access to information.

(a) Except as provided in subsection (b), the following information shall be considered government records and shall be available for public inspection pursuant to 24.0109 ASCA:

(1) All permit applications;

(2) All supporting information for permit applications;

(3) Compliance plans and schedules;

(4) Reports and results associated with performance tests and continuous emission monitors;

(5) Ambient air monitoring data and emissions inventory data;

(6) Compliance certifications;

(7) Any other information submitted to the Commission pursuant to the air pollution control permit program;

(8) Permits; and

(9) Public comments or testimonies received during any public comment period or public hearing.

(b) Any owner or operator of an existing or proposed air pollution emission source may request confidential treatment of specific information, including information concerning secret processes or methods of manufacture, by submitting a written request to the Commission at the time of submission, and clearly identifying the specific information that is to be accorded confidential treatment. With respect to each item of confidential information, the owner or operator requesting that it be designated as confidential shall provide documentation concerning:

(1) How each item of information concerns secret processes, secret method of manufacture, or is determined to be confidential pursuant to ASCA 24.0109;

(2) Who has access to each item of information;

(3) What steps have been taken to protect the secrecy of each item of information; and

(4) Why it is believed each item of information must be accorded confidential treatment and the anticipated prejudice should disclosure be made.

(c) Any information submitted to the Commission without a request for confidentiality in accordance with this section shall be considered a public record;

(1) Upon a satisfactory showing to the Commission by any owner or operator that any records, reports, or information, or particular part thereof, to which the Commission has access pursuant to these Standards and Regulations, contain information of a confidential nature under ASCA 24.0109, the executive secretary shall identify the records, reports or information, or particular part thereof, for which access is restricted or closed by law and these shall be kept confidential except that such records, reports, or information may be disclosed to other territory and federal officers or employees concerned with carrying out these Standards and Regulations or when relevant in any proceeding pursuant thereto. If required by USEPA, all records, reports or information determined by the owner or operator to be confidential shall be submitted directly to USEPA. Neither the contents of the permit nor emissions data shall be entitled to confidentiality protection.

(2) Records, reports, or information for which confidentiality has been claimed may be disclosed only after the requirements of ASCA 24.0160 have been satisfied and the person requesting confidentiality has had an opportunity to obtain judicial review pursuant to subsection (f).

(3) Any person who has claimed confidentiality for records, reports or other information and whose claim was denied by the Commission may obtain judicial review of the denial pursuant to ASCA 24.0160. Records which are the subject of a judicial review shall not be released until the judicial review is complete and only if the court authorizes such release.

(4) All requests for public records shall be in writing, shall be addressed to the executive secretary of the Commission, and shall identify or describe the character of the requested record. Upon approval by the Commission, the requested public record shall be available to the requester for inspection and copying during established office hours. The Commission shall charge a reasonable cost for reproduction of any public record, but not more than twenty-five cents per page, sheet, or fraction thereof.

History: 2005

24.0506 Prompt reporting of deviations.

In the event any emission unit, air pollution control equipment, or related equipment breaks down in such a manner as to cause the emission of air pollutants in violation of these Standards and Regulations or a permit, the owner or operator shall immediately notify the executive secretary of the failure or breakdown, unless the protection of personnel or public health or safety demands immediate attention to the failure or breakdown and makes such notification unfeasible. In the latter case, the notice shall be provided as soon as practicable, but in all cases within two working days of the time when emission limitations were exceeded due to the emergency. In the case of emergencies which result in noncompliance with section 24.0537 for air pollution emission sources, compliance with section 24.0537 shall satisfy the requirements of this section.

History: 2005

24.0507 Penalties and Remedies.

Any person who violates any provision of these Standards or Regulations or any term or condition of a permit shall be subject to the penalties and remedies provided for in section 24.0150 through 24.0166 ASCA.

History: 2005

24.0508 Severability.

If any provision of these Standards and Regulations or their application to other persons or circumstances is held invalid, the application of such provision to other persons or circumstances and the remainder of these Standards and Regulations shall not be affected thereby.

History: 2005

24.0510 Ambient Air Quality Standards.

(a) The ambient air quality standards for the territory of American Samoa shall be the same as the National Primary and Secondary Air Quality Standards set forth at 40 CFR 50.1, et seq. These standards are enumerated below:

(1) The American Samoa ambient air quality standard for sulfur oxide measured as sulfur dioxide is 1,300 micrograms per cubic meter (0.5 p.p.m.) maximum 3-hour concentration not to be exceeded more than once per year; the 24-hour standard is 0.14 p.p.m not to be exceeded more than once per year; and the annual standard is 0.030 p.p.m not to be exceeded in a calendar year.

(2) The American Samoa 24-hour ambient air quality standards for particulate matter (PM10) is 150 micrograms per cubic meter, 24-hour average concentration. The annual standard for particulate matter is 50 micrograms per cubic meter (mg/m3), annual arithmetic mean.

(3) The American Samoa ambient air quality standard for ozone (measured by reference to 40 CFR 50 appendix D) is .12 parts per million (235 mg/m3).

(4) The American Samoa ambient air quality standard for nitrogen dioxide is 0.053 parts per million (100 micrograms per cubic meter) annual arithmetic mean concentration.

(5) The American Samoa ambient air quality standard for lead is 1.5 micrograms per cubic meter maximum arithmetic mean over a calendar quarter.

(6) The American Samoa ambient air quality standard for carbon monoxide is 10 mg/m3 (9ppm) as a maximum 8-hour average concentration not to be exceeded more than once per year, and 40 mg/m3 (35 ppm) maximum 1-hour average concentration not to be exceeded more than once per year.

(b) Measurements for American Samoa ambient air quality standards shall be determined using methods set out in 40 CFR part 50, including appropriate appendices thereto, or by any other methods approved in advance by the Commission.

(c) These numerical air quality standards are the maximum allowable concentrations of pollutants in the ambient air necessary to protect the health and welfare of the people of American Samoa. No degradation of the quality of the ambient air shall be permitted in areas in which the concentrations of the identified pollutants are lower than the numerical standards established by these Standards and Regulations unless such lowering of air quality will not violate any applicable federal law or regulations (including prevention of significant deterioration) and it has been adequately demonstrated to the executive secretary that a degradation of the air quality in an area is justified as a result of necessary economic or social development and that such lowering of air quality will not seriously interfere with or become injurious to the health, enjoyment, and comfortable enjoyment of life or property.

History: 2005

24.0511 Incineration.

(a) No person shall cause or permit the emissions of particulate matter to exceed 0.20 pounds per one hundred pounds (two grams per kilogram) of refuse charged from any incinerator.

(b) All required emission tests shall be conducted at the maximum burning capacity of the incinerator or at other capacities, as approved by the Commission.

(c) The burning capacity of an incinerator shall be the manufacturer's or designer's guaranteed maximum rate or such other rate as may be determined by the Commission.

(d) For the purposes of this section, the total of the capacities of all furnaces within one system shall be considered as the incineration capacity.

History: 2005

24.0512 Open Burning.

No person shall dispose of combustible material by open burning, or ignite, cause to be ignited, permit to be ignited, or maintain any open fire within the territorial limits of American Samoa, except as follows:

(1) Open fires for the cooking of food for human consumption on other than commercial premises;

(2) Fires for recreational or ceremonial purposes;

(3) Fires to abate a fire hazard, providing a hazard is declared by the fire department or fire district having jurisdiction in the area;

(4) Fires for prevention or control of disease or pests;

(5) Fires for training personnel in the methods of fighting fires in compliance with 24.0511(1);

(6) Fires for the disposal of dangerous materials, but only where there is no alternate method of disposal and such burning is approved in advance by the executive secretary;

(7) Agricultural burning;

(8) Other open burning as deemed necessary and approved in advance by the executive secretary.

History: 2005

24.0513 Hearings.

Any person who receives an order from the Commission or its authorized representatives as authorized by these Standards and Regulations, or whose permit application is disapproved or denied by the Commission, or is adversely affected by a decision of the Commission may have appeal or judicial review rights as provided for in 24.0123 and 24.0160 ASCA.

History: 2005

III. PERMITS

24.0520 Definitions.

As used in this Part:

(1) "Administrative permit amendment" is a permit revision that:

(A) Corrects typographical errors;

(B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(C) Requires more frequent monitoring or reporting by the permittee;

(D) Consolidates the terms and conditions of two or more air pollution control permits into one air pollution control permit for a facility; and

(E) Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the executive secretary.

(2) "AP-42" means the most recent edition, supplements, and appendices of USEPA's Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources.

(3) "Applicable requirement" is defined as follows:

(A) If an air pollution emission source is a federal oversight source, "applicable requirement" means all of the following as they apply to emissions units in the air pollution emission source (including requirements that have been promulgated or approved by USEPA through rulemaking at the time of issuance but have future-effective compliance dates):

(i) Any standard or other requirement provided for in the applicable state implementation plan approved or promulgated by USEPA, including any revision to that plan promulgated in 40 CFR Part 52;

(ii) Any term or conditions of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Clean Air Act;

(iii) Any standard or other requirement under section 111 of the Clean Air Act, including section 111(d);

(iv) Any standard or other requirement under section 112 of the Clean Air Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(v) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Clean Air Act;

(vi) Any standard or other requirement governing solid waste incineration, under section 129 of the Clean Air Act;

(vii) Any standard or other requirement for consumer and commercial

products, under section 183(e) of the Clean Air Act;

(viii) Any standard or other requirement for tank vessels under section 183(f) of the Clean Air Act;

(ix) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Clean Air Act;

(x) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Clean Air Act, unless the USEPA Administrator has determined that such requirements need not be contained in an air pollution control permit; and

(xi) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Clean Air, but only as it would apply to temporary sources pursuant to section 504(e) of the Clean Air Act.

(B) For all other air pollution emission sources, "applicable requirement" shall mean all of the following as they apply to emissions units in the air pollution emission source:

(i) Any NAAQS or American Samoa air quality standard;

(ii) The application of best available control technology to control those pollutants subject to any NAAQS or American Samoa air quality standard, but only as best available control technology would apply to new or proposed air pollution emission sources and modifications to air pollution emission sources that have the potential to emit or increase emissions above significant amounts considering any limitations, enforceable by the Commission, on the air pollution source to emit a pollutant; and

(iii) Any standard or other requirement provided in these Standards and Regulations.

(4) "Federal oversight source" means an air pollution emission source that does not qualify for a source category exemption under 40 CFR § 70.3(b) and that is:

(A) A major source;

(B) Subject to standards of performance or other requirement of section 111 of the Clean Air Act;

(C) A non-major source of hazardous air pollutants subject to an emission standard or other requirement for hazardous air pollutants pursuant to Section 112 of the Clean Air Act or Part V of these Standards and Regulations, except those sources solely subject to regulations or requirements pursuant to Section 112(r) of the Clean Air Act.

(5) "Insignificant sources" means any air pollution emission sources that can be classified as insignificant sources – type I or insignificant sources – type II.

(6) "Insignificant sources – type I" means any air pollution emission source that is not a federal oversight source and includes only the following sources of air pollutants:

(A) Any storage tank, reservoir or other container of capacity equal to or less than forty thousand gallons storing volatile organic compounds, except those storage tanks, reservoirs, or other containers subject to any standard or other requirement pursuant to Sections 111 and 112 of the Clean Air Act;

(B) Other than smoke house generators, fuel burning equipment with a heat input capacity less than one million BTU per hour, except where the total heat input capacity of all individually exempted equipment exceeds five million BTU per hour when operated within the facility and controlled by a single owner or operator;

(C) Steam generators, steam superheaters, water boilers, or water heaters, which have a heat input capacity of less than five million BTU per hour, and are fired exclusively with natural, synthetic, or liquefied petroleum gas, or any combination of these;

(D) Kilns used for firing ceramic ware heated exclusively by natural gas, electricity, liquid petroleum gas, or any combination of these and have a heat input capacity of five million BTU per hour or less;

(E) Standby generators used exclusively to provide electricity, standby sewage pump personnel and the public, all of which are used only during power outages, emergency equipment maintenance and testing, and are fired exclusively be natural or synthetic gas; or liquefied petroleum gas; or fuel oil No. 1 or No. 2; or diesel fuel oil No. 1D or No. 2D;

(F) Paint spray booths;

(G) Welding booths (if there are more than five at the facility); and

(H) Portable diesel or gasoline fired industrial equipment less than two hundred horsepower in size which are used during power outages or intermittently for maintenance and repair purposes (if there are more than five at the facility);

(7) "Insignificant sources- type II" means any air pollution emission source that is not a federal oversight source and includes only the following sources of air pollutants:

(A) Welding booths (if less than five at a facility);

(B) Portable diesel or gasoline fired industrial equipment less than two hundred horsepower in size which are used during power outages or intermittently for maintenance and repair purposes (if less than five at the facility);

(C) Hand held equipment used for buffing, polishing, carving, cutting, drilling, machining, sanding, sawing or surface grinding, provided reasonable precautions are taken to prevent particulate matter from becoming airborne. Reasonable precautions include the use of dust collection systems, dust barriers, or containment systems;

(D) Laboratory equipment used exclusively for chemical and physical analyses;

(E) Containers, reservoirs, or tanks used exclusively for dipping operations for coating objects with oils, waxes, or greases where no organic solvents, diluents, or thinners are used; or dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents;

(F) Closed tumblers used for cleaning or deburring metal products without abrasive blasting, and pen tumblers with batch capacity of one thousand pounds or less.

(G) Ocean going vessels, except for ocean-going vessels subject to any standard or other requirement for the control of air pollution from outer continental shelf sources pursuant to 40 CFR Part 55;

(H) Fire water system pumps dedicated for fire-fighting and to maintain fire water system pressure, and fired exclusively by natural or synthetic; or liquefied petroleum gas; or fuel oil No. 1 or No. 2; diesel fuel No. 1D or No. 2D;

(I) Smoke generating systems used exclusively for training in government or certified fire fighting training facilities;

(J) Mobile internal combustion engines;

(K) Diesel fired portable ground support equipment exclusively to start aircraft or provide temporary power to aircraft prior to start-up;

(L) Fuel burning equipment which is used in a private dwelling or for space heating, other than boilers or hot furnaces;

(M) Ovens, stoves, or grills used solely for the purpose of preparing food for human consumption operated in private dwellings, restaurants, or stores;

(N) Stacks or vents to prevent escape of sewer gasses through plumbing traps;

(O) Air conditioning or ventilation systems not designed to remove air pollutants generated by ore released from equipment, and that do not involve the open release or venting of CFCs into the atmosphere; and

(P) Woodworking shops with a sawdust collection system.

(8) "Major source" means an air pollution emission source, or a group of air pollution emission sources that are located on one or more contiguous properties or adjacent properties, and

are under common control or command of the same person or persons, belonging to a single major industrial grouping (i.e., all have the same two-digit Standard Industrial Classification Code) and that emits or has the potential to emit:

(A) Any hazardous air pollutant, except radionuclides, in the aggregate of ten tons per year or more including fugitive emissions, or twenty-five tons per year or more of any combination including fugitive emissions, or such lesser quantity as the USEPA Administrator may establish by rule;

(B) One hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act or these Standards and Regulations. Fugitive emissions from the air pollution emission source shall be considered in determining whether the source is major, if it belongs to one of the following categories of air pollution emission sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric or nitric acid plants;

(x) Petroleum refineries

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii)Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel fired steam electric plants of more than 250 million BTU per hour heat input; and

(xxvii) All other air emission source categories regulated by a standard promulgated pursuant to Section 111 or 112 of the Clean Air Act, but only with respect to those air pollutants that have been regulated for that category; or

(A) For radionuclides, major source shall have the meaning specified by the USEPA Administrator by rule.

(B) In nonattainment areas, a major stationary source as defined in part D of title I of the Clean Air Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25 and 10 tpy of nitrogen oxides shall not apply with respect to any source for which

the USEPA Administrator has made a finding, under section 182(f)(1) or (2) of the Clean Air Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Clean Air Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:

(A) That are classified as "serious," and

(B) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

(9) "Modification" means a physical change in or change in the method of operation of an air pollution emission source which requires a change to a permit. Routine maintenance, repair and replacement shall not be considered a modification.

(10) "Pollution prevention" means the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source.

(11) "Significant modification" means a modification of a federal oversight source which:

(A) Increases the emissions of any air pollutant above the permitted emission limits;

(B) Results in significant increase in emissions of any air pollutant;

(C) Violates an applicable requirement;

(D) Involves a relaxation or changes other than administrative permit amendments to existing monitoring requirements or reporting or recordkeeping requirements in the permit. Any change to the existing monitoring, reporting, or recordkeeping requirements that reduces the enforceability of the permit is considered a significant change;

(E) Requires or changes a case-by-case determination of an emission limitation or other standard, or a visibility or increment analysis;

(F) Is a modification pursuant to any provision of Title I of the Clean Air Act.

History: 2005

24.0521 Program Applicability.

(a) Except as provided in subsection (b), no federal oversight source or any other air pollutant emission source with potential emissions greater than 1 ton per year of any air pollutant or more than 0.1 ton per year of any hazardous air pollutant may begin construction or continue operation without first obtaining a valid stationary air pollution source permit from the Commission.

(b) If an air pollution emission source is also a major source emitting HAPs, the owner or operator of such source shall obtain an air pollution control permit from the USEPA Administrator under the provisions of 40 CFR Part 71. A copy of this permit shall be furnished to the Commission prior to the commencement or continuation of construction, reconstruction, modification, relocation or operation of the source.

(c) Stationary air pollution source permits issued by the Commission shall remain valid past the expiration date and the air pollution emission source shall not be in violation for failing to have a stationary air pollution source permit until the Commission has issued or denied the renewal of such permit, provided:

(1) In the six to eighteen months prior to permit expiration, a complete renewal application has been submitted and the owner or operator acts consistently with the permit previously granted, and the application on which it was based, and all plans, specifications, and other information submitted as part of the application; and

(2) The owner or operator has submitted to the Commission within the specified deadlines all requested additional information deemed necessary to evaluate or take final action on the renewal application as described in section 24.0524.

(d) The air pollution control permit shall not constitute, nor be construed as an approval of the design of the air pollution emission source. The permit shall be issued in accordance with these Standards and Regulations and it is the responsibility of the applicant to ensure compliance with all applicable requirements in the construction of any air pollution emission source.

History: 2005

24.0522 General conditions for issuing a permit.

(a) The Commission may issue a stationary air pollution source permit if the owner or operator of an air pollution emissions source can show to the satisfaction of the Commission that all applicable provisions of these Standards and Regulations will be complied with, including, as applicable:

(1) The maintenance and attainment of an NAAQS and any American Samoa ambient air quality standard;

(2) General prohibitions and standards (and regulations specific to that source) pursuant to Part II of these standards and regulations;

(3) Requirements for air pollution emission sources pursuant to Part III of these standards and regulations;

(4) Applicable Standards of Performance for New Stationary Sources (40 CFR Part 60), National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61), or any other federal standard or other requirement established pursuant to the Clean Air Act.

(5) Applicable standards of performance for air pollution emission sources pursuant to Part IV of these Standards and Regulations; and

(6) Requirements for hazardous air pollutant sources pursuant to Part V;

(b) Air pollution control permits, including permit renewals, and permit amendments for modifications shall be issued only if all of the following conditions are met:

(1) The Commission has obtained enough information to determine that the air pollution emission source will comply with all of the requirements of subsection (a);

(2) The executive secretary has provided an opportunity for all applicable public participation requirements pursuant to section 24.0539;

(3) the permit provides for compliance with all applicable requirements and contains applicable terms and conditions pursuant to 24.0528; and

(4) All applicable requirements for transmission of information to USEPA and USEPA oversight have been satisfied pursuant to 24.0532 and 24.0533.

History: 2005

24.0523 Holding, transfer, and cancellation of permit.

(a) Each stationary air pollution source permit, or a copy thereof, shall be maintained at or near the air pollution emission source for which the permit was issued and shall be made available for inspection upon the executive secretary's request.

(b) No person shall willfully deface, alter, forge, counterfeit, or falsify a stationary air pollution source permit.

(c) All permits issued pursuant to these Standards and Regulations shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one piece of equipment to another.

(d) All permits issued pursuant to these Standards and Regulations shall not be transferable, whether by operation of law or otherwise, from one person to another without the approval of the Commission.

(e) Within thirty days of permanent discontinuance of the operation of any permitted air pollution emission source, the discontinuance shall be reported in writing to the Commission by a responsible official of the source.

History: 2005

24.0524 Stationary air pollution source permit application.

(a) Except as stated in subsection (b), applications for stationary air pollution source permits shall be submitted to the director on forms furnished by the Commission. A copy of this form is appended hereto and incorporated by reference herein. The applicant shall further submit sufficient information to enable the Commission to make a decision on the application and to determine the fee requirements specified in 24.0540 and 24.0541.

(b) For air pollution emission sources required to obtain a federal operating permit under the provisions of 40 CFR Part 71, owners and operators may submit a copy of the federal permit application to the Commission in place of forms furnished by the Commission. The owner or operator must include with the application a form to calculate annual fees pursuant to section 24.0541. All signatures required on the application forms must be original signatures.

(c) Applications for initial stationary air pollution source permits shall include the following information:

(1) Identifying information about the stationary air pollution emission source, including name address, and phone number of:

(A) The company (the plant if different from the company);

(B) The owner and the owner's agent;

(C) The plant site manager or other contact; and

(D) The person responsible for recordkeeping, and the location where required records are to be kept.

(2) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules to the extent needed to determine or regulate emissions; specifications and drawings showing the design of the source and plant layout; and a description of all processes and products by Standard Industrial Classification Code;

(3) Maximum emissions rates, including fugitive emissions, of all regulated and hazardous air pollutants and all air pollutants for which the source is major from each emissions unit. Emissions rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. All supporting emissions calculations and assumptions shall also be provided;

(4) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the source, and to the extent of available information, an estimate of emissions before and after controls;

(5) Current operational limitations or work practices, or for air pollution emission sources that have not yet begun operations, such limitations or practices which the owner or operator of the source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source;

(6) All calculations and assumptions upon which paragraphs (2), (4) and (5) are based;

(7) A copy of any/all air pollution permits issued by the Commission or USEPA;

(8) A compliance plan and compliance certification pursuant to section 24.0528;

(9) Citation and description of all applicable requirements, a description of or reference to any applicable test method for determining compliance with each applicable requirement, and an explanation of all proposed exemptions from any applicable requirement.

(10) For proposed or new major sources or significant modifications:

(A) A detailed schedule for construction of the source or modification;

(B) For existing sources, an assessment of the ambient air quality impact of the air pollution emission source. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS;

(C) For new sources and significant modifications which increase the emissions of any air pollutant or result in the emission of any air pollutant not previously emitted, an assessment of the ambient air quality impact of the new source or significant modification, with the inclusion of any available background air quality data. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS; and

(D) An explanation of all proposed exemptions from any applicable requirement.

(11) At the request of the Commission, the following information must also be submitted:

(A) A risk assessment of the air quality related impacts caused by the source or significant modification to the surrounding environment;

(B) Results of source emission testing, ambient air quality monitoring, or both;

(C) Information on other available control technologies; and

(D) Other information deemed necessary to make a decision on the application or needed to implement and enforce other applicable requirements of the Clean Air Act or these Standards and Regulations, or to determine the applicability of such requirements; and

(12) A certification by a responsible official of truth, accuracy, and completeness of all submitted documents.

(d) Applications for renewals of stationary air pollution source permits are subject to the same requirements as an initial application. If the source is a federal oversight source, applications for renewal shall be submitted at least six (6) months prior to permit expiration. For all other air pollution emission sources, renewal applications are due 60 days prior to permit expiration. Late applications shall be subject to penalties pursuant to section 24.0542(d). Applicants shall submit a statement certifying whether any changes have been made in the design or operation of the source as proposed in the initial and any subsequent permit applications. If changes have occurred or are proposed, the applicant shall provide a description of those changes such as work practices, operations, equipment design, and monitoring procedures, including the affected applicable requirements associated with the changes and the corresponding information to determine the applicability of all applicable requirements. If the application for renewal has not been approved or denied within the time specified in subsection (j), the stationary air pollution source permit and all its terms and conditions shall remain in effect and not expire until the application for renewal has been approved or denied, provided the applicant has submitted any additional information within the reasonable deadline specified by the Commission.

(e) If an air pollution emission source includes insignificant sources – type I or insignificant sources – type II, the insignificant sources shall be exempt from the permit application requirements of subsection (a), provided:

(1) No such exemption interferes with the imposition of any applicable requirement or the determination of whether an air pollution emission source is subject to an applicable requirement; and

(2) The owner or operator can demonstrate to the director that the source meets the size, emission level, or production rate criteria specified in the definition of insignificant source.

(3) Insignificant sources – type I shall be identified in the air pollution control permit application. Insignificant sources – type II need not be identified in the air pollution control permit application. The Commission may request additional information on any insignificant source to determine the applicability of a fee requirement, or to impose any applicable requirement, or to determine the fee requirement specified in section ASAC 24.0534.

(f) Applications for modifications of stationary air pollution source permits are subject to the same requirement as an initial application. Applicants

shall submit a description of the modification, identifying all proposed changes, including any changes to the source operations, work practices, equipment design, source emissions or any monitoring, record keeping, and recording procedures. Each change from the permit application for the existing stationary air pollution source permit shall be identified on the application for the permit modification.

(g) The Commission shall not continue to act upon or consider an incomplete application. An application shall be determined to be complete only when all of the following have been complied with:

(1) All information required or requested on the application form and pursuant to subsections (a) through (f);

(2) All documents requiring certification have been certified pursuant to section 24.0504;

(3) All applicable fees pursuant to sections 24.0540 through 24.0543 have been submitted; and

(4) The executive secretary has certified that the application is complete.

(h) The executive secretary shall notify the applicant in writing whether the application is complete within sixty (60) days of receipt of the application. Unless the executive secretary requests additional information or notifies the applicant of incompleteness within sixty (60) days after receipt of an application, the application shall be deemed complete.

(i) During the processing of an application that has been determined or deemed complete, if the executive secretary determines that additional information is necessary to evaluate or take final action on the application, the executive secretary may request such information in writing and set a reasonable deadline for a response.

(j) If an air pollution emission source is a federal oversight source, the Commission shall approve or deny an application for a stationary air pollution source permit within twelve (12) months after receipt of a complete application for an existing source, and within ninety (90) days after receipt of a complete application for a non-significant modification. For all other air pollution emission sources, the Commission shall approve, conditionally approve, or deny an application for a permit within twelve (12) months after receipt of a complete application for a new source, and within 90 days after receipt of a complete application for an existing source or modification.

(k) A stationary air pollution source permit for a new source or a significant modification shall be approved only if the Commission determines that the construction and operation of the new source or significant modification will be in compliance with all applicable requirements.

History: 2005

24.0525 Submittal of initial permit applications-deadlines.

(a) Upon program approval, all owners or operators of existing air pollution emission sources shall submit to the Commission a complete initial permit application within twelve (12) months of program approval. Owners or operators of such sources who applied for a stationary air pollution source permit prior to program approval, but have not yet received a permit, shall also submit a complete and timely permit application within twelve (12) months of program approval. An owner or operator shall not commence or continue construction, reconstruction, modification, relocation or operation without a permit issued under these standards and regulations unless written approval is granted by the Commission.

(b) Upon program approval, all owners or operators of new or proposed air pollution emission sources who have not previously applied for a stationary air pollution source permit shall submit a complete permit application within twelve (12) months of program approval. A stationary air pollution source permit shall be obtained prior to commencement of construction, reconstruction, modification, relocation or operation unless written approval is granted by the Commission.

(c) All existing stationary air pollution source permits shall remain valid past the expiration date for a period not to exceed 15 months until a new stationary air pollution source permit is issued under these standards and regulations.

(d) Requests for an extension of time to file a permit application shall be made at least thirty (30) days prior to the required submission date and shall include the following information:

(1) Justification for the extension, including a showing that reasonable effort and resources have been and are being utilized in the preparation of the application;

(2) A description of the problems being encountered and the reasons for the delays in meeting the application deadline;

(3) The current status of the stationary air pollution source permit application; and

(4) The projected completion date of stationary air pollution source permit application. If the Commission disapproves an extension for initial application submittal, the owner or operator shall meet the scheduled submission date. Under no circumstances shall the deadline for submitting an initial stationary air pollution source permit application be extended more than 15 months past program approval.

(e) All stationary air pollution source permit applications, compliance plans, compliance certifications, and filing fees shall be submitted in accordance with sections 24.0524, 24.0527, and 24.0540 through 24.0543.

History: 2005

24.0526 Duty to supplement or correct permit applications.

An applicant for a stationary air pollution source permit who fails to submit any relevant facts or who has submitted incorrect information in any permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to the release of the draft permit.

History: 2005

24.0527 Compliance plans and certifications.

A compliance plan and compliance certification shall be submitted with each permit application, at such times as requested by the Commission and as otherwise required by subsections (a)(1) and (a)(2) of this rule.

(1) The compliance plan required by this rule shall be submitted by the owner or operator of an air emissions source and shall include at a minimum the following information:

(A) A description of the compliance status of the existing air pollution emission source or proposed source with respect to the applicable requirements, and the following statement or description and compliance schedule for expeditiously achieving compliance, as applicable:

(i) For applicable requirements with which the source is in compliance, a statement that the source is in compliance with all applicable requirements and will continue to comply with such requirements;

(ii) For applicable requirements which become applicable during the permit term, a statement that the source will meet all such applicable requirements on a timely basis. The statement shall include documentation on the proposed method the owner or operator will use to obtain compliance and a compliance schedule demonstrating that the source will expeditiously achieve compliance with such applicable requirement by the date specified in the applicable requirement. A detailed schedule for compliance shall be provided if required by the applicable requirement.

(iii) For applicable requirements with which the source is not in compliance, a narrative description of how the source will achieve compliance and a detailed compliance schedule containing specific milestones of remedial measures to expeditiously achieve compliance. The compliance schedule shall supplement and shall not sanction noncompliance with the applicable requirements on which the schedule is based.

(B) If a compliance plan is to remedy a violation, a progress report certified pursuant to section 24.0504 shall be submitted no less frequently than annually and shall include:

(i) Dates for achieving the activities, milestones, or compliance and dates when such activities, milestones or compliance were achieved;

(ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(2) The compliance certifications required by this rule shall be submitted annually and with each permit application by a responsible official of the emissions source. The responsible official shall certify that the compliance certification is true, accurate and complete. Such certifications shall include:

(A) For certifications submitted with permit applications, a detailed description of the methods to be used in determining compliance with all applicable requirements and a statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements, including the requirements of Section 114(a)(3) of the Clean Air Act or any applicable enhanced monitoring and analysis provisions of Section 504(b) of the Clean Air Act;

(B) For annual compliance certifications and those requested by the Commission, the identification of each term or condition of the permit that is the basis of the certification; the source's compliance status currently and over the reporting period; a description of the methods used for determining compliance status currently and over the reporting period; and a compliance plan submitted in accordance with subsection (1) of this section.

History: 2005

24.0528 Permit content.

The Commission shall consider and incorporate the following elements in all stationary air pollution source permits, as applicable:

(1) Quantifiable emissions limitations and standards, including operational requirements and limitations, to ensure compliance with all applicable requirements at the time of issuance;

(2) Requirements regarding fugitive emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of "major source";

(3) The origin of and authority for each term or condition and any differences in form as compared to the applicable requirement upon which the term or condition is based;

(4) The permit term pursuant to section 24.0529;

(5) Requirements for the installation of devices, at the expense of the owner, for the measurement or analysis of source emissions or ambient concentration of air pollutants;

(6) The requirement for source emissions tests or alternative methodology to determine compliance with all terms and conditions of the stationary air pollution source permit, and applicable requirements. Source emission tests conducted or alternative methodology used shall be at the expense of the owner or operator;

(7) All monitoring and related recordkeeping and reporting requirements to assure compliance with all terms and conditions of the permit. Each stationary air pollution source permit shall address the following with respect to monitoring, record keeping, and reporting:

(A) All reporting, emissions monitoring and analysis procedures, or test methods required pursuant to the applicable requirements, including any procedures or methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Clean Air Act;

(B) If the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring, periodic monitoring or recordkeeping sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit;

(C) Monitoring results expressed in units, averaging periods, and other statistical conventions consistent with the applicable requirements;

(D) Requirements concerning the use, maintenance, and installation of monitoring equipment. The installation, operation, and maintenance of the monitoring equipment

shall be at the expense of the owner or operator;

(E) Appropriate monitoring methods;

(F) Monitoring records including:

(i) Place as defined in the permit, date, and time of sampling or measurement;

(ii) Dates the analyses were performed;

(iii) The name and address of the company or entity that performs analyses;

(iv) Analytical methods or techniques used;

(v) Analyses results; and

(vi) Operating conditions during the time of sampling or measurement;

(G) Other records including support information, such as calibration and maintenance records, original strip chart recordings or computer printouts for continuous monitoring instrumentation, and all other reports required by the Commission;

(H) A requirement for the retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit;

(I) A requirement for submission of reports of any required monitoring at least every six months. Deviations from the permit requirements shall be clearly identified and addressed in these reports;

(J) A requirement for prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The term "prompt" shall be delineated on a permit-by-permit basis in relation to the degree and type of deviation likely to occur and the applicable requirements; and

(K) provisions for the owner or operator to annually report, in writing, emissions of hazardous air pollutants;

(8) Pollution prevention audits and the implementation of pollution prevention measures to ensure that emissions are reduced or eliminated when feasible;

(9) General provisions including:

(A) A statement that the owner or operator shall comply with the terms and conditions of its permit and that any permit noncompliance constitutes a violation of these Standards and Regulations and, for all federally enforceable terms or conditions, the Clean Air Act, and is grounds for enforcement action, permit termination, suspension, reopening, or amendment, or for denial of a permit renewal application;

(B) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit;

(C) A statement that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the terms and conditions of the permit;

(D) A statement that the permit may be terminated, suspended, reopened, or amended for cause pursuant to section 24.0538. The filing of a request by the permittee for a permit termination, suspension, reopening, or amendment, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;

(E) A statement that the permit does not convey any property rights of any sort, or any exclusive privilege;

(F) A provision that the owner or operator shall notify the Commission in writing of the anticipated date of initial start-up for each emission unit of a new air pollution emission source or significant modification not more than sixty days or less than thirty days prior to such date. The Commission shall also be notified in writing of the actual

date of construction commencement and start-up within fifteen days after these dates;

(G) A statement that the owner or operator shall furnish in a timely manner any information or record requested in writing by the Commission to determine whether cause exists for terminating, suspending, reopening, or amending the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish copies of records required to be kept by the permit.

(H) A requirement that a copy of applicable correspondence or records submitted to the Commission be provided to USEPA pursuant to section 24.0532.

(I) A provision for the designation of confidentiality of any records to be afforded confidentiality pursuant to section 24.0505.

(J) A requirement that the owner or operator shall submit fees in accordance with sections 24.0540 and 24.0541;

(K) Certification requirements pursuant to section 24.0504.

(L) A requirement that the owner or operator allow the director or an authorized representative, at least once per calendar year or at any other time upon presentation of credentials or other documents required by law:

(i) To enter the owner or operator's premises where a source is located or emission-related activity is conducted, or where records must be kept under the conditions of the permit and inspect at reasonable times all facilities, equipment, including monitoring and air pollution control equipment, practices, operations, or records covered under the terms and conditions of the permit and request copies of records or copy records required by the permit; and

(ii) To sample or monitor at reasonable times substances or parameters to assure compliance with the permit or applicable requirements;

(10) Compliance plan and compliance certification submittal requirements pursuant to section 24.0522.

(11) other provisions to assure compliance with all applicable requirements; and

(12) Any other provision the Commission imposes to further limit the construction and operation of the source. These conditions may include restrictions, control requirements, or performance standards normally reserved for air pollution emission sources with larger capacities than the air pollution emission source being permitted. In determining whether to impose more restrictive conditions, the Commission shall consider the relevant circumstances of each individual case, including the availability of a reasonable control technology, cleaner fuels, or a less polluting operating process; the consideration of the existing air quality and the resulting degradation; the protection of the public health, welfare and safety; and any information, assumptions, limitations, or statements make in conjunction with a permit application.

History: 2005

24.0529 Permit Term or Duration.

An air pollution control permit shall be issued or renewed for a fixed term of five years unless the owner or operator of the source requests a shorter term, or the Commission determines that a shorter term is warranted.

History: 2005

24.0530 Inspections.

(a) Every source required to obtain a permit pursuant to these Standards and Regulations shall be subject to regular inspections at least every six months for compliance with all applicable requirements, these rules, and the terms and conditions of a permit. Such inspections shall be conducted by any duly authorized officer, employee or representative of the Commission and shall take place at any reasonable time. No person shall refuse entry or access to any authorized representative of the executive secretary who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such inspection.

(b) Inspections may include emissions testing, monitoring, sampling and on-site inspections of facilities, equipment, practices, operations, or records required to be maintained according to the terms and conditions of an owner or operator's permit. Emissions sources found to be in violation of an applicable requirement, these Standards and Regulations, or any terms and conditions of an stationary air pollution source permit shall immediately take all appropriate actions to achieve compliance and shall be subject to all enforcement penalties and remedies provided by, or incorporated by reference in, these Standards and Regulations.

History: 2005

24.0531 Federally Enforceable Terms and Conditions.

Terms and conditions included in a stationary air pollution source permit, including any provision designed to limit a source's potential to emit, are federally enforceable unless such terms, conditions, or requirements are specifically designated as not federally enforceable. Terms and conditions in a stationary air pollution source permit related to applicable requirements (including limits on a source's potential to emit) shall in all cases be federally enforceable. Those terms and conditions which are left undesignated shall become federally enforceable upon permit issuance provided the USEPA Administrator does not object during the 45-day review pursuant to section 24.0533.

History: 2005

24.0532 Transmission of information to the USEPA.

(a) If the air pollution emission source is a federal oversight source:

(1) The executive secretary shall submit to the USEPA Administrator a copy of each proposed and final stationary air pollution source permit, including administrative permit amendments;

(2) The owner or operator shall simultaneously submit to the USEPA Administrator a copy of all stationary air pollution source permit applications, including any applications for renewals and amendments reflecting modifications submitted to the Commission;

(3) By agreement with the USEPA Administrator or pursuant to federal regulation, the executive secretary may waive the requirements of this section, or submit summaries for specific categories of non-major air pollution emission sources.

(b) For all other stationary air pollution sources, the Commission may at any time require the owner or operator to submit to the USEPA Administrator a copy of any permit compliance certification, or records required to be kept under the permit.

(c) The Commission shall maintain records on all air pollution control permit applications, compliance plans, proposed and final permits, and other relevant information for a minimum of five years.

History: 2005

24.0533 USEPA oversight.

If an air pollution emission source is a federal oversight source, the Commission shall abide by the following practices and restrictions:

(1) Upon program approval, the Commission shall not issue a stationary air pollution source permit, permit renewal, or permit amendment for a non-minor modification, if the USEPA Administrator objects to its issuance in writing within forty-five days of receipt of the proposed permit and all necessary supporting information.

(2) Upon program approval, the Commission shall submit to the USEPA Administrator an amended proposed stationary air pollution source permit within 180 days after receipt of any written objection from the USEPA Administrator. If the Administrator's objections are not resolved within 180 days, USEPA shall issue a permit under 40 CFR Part 71.

History: 2005

24.0534 Administrative permit amendment.

(a) The Commission, on its own initiative or upon written request from the owner or operator of a stationary air pollution emissions source, may issue an administrative permit amendment.

(b) Except for a request to consolidate two or more air pollution control permits into one or to change ownership or operation control, an owner or operator requesting an administrative permit

amendment may make the requested change immediately upon submittal of the request.

(c) Within sixty days of receipt of a written request for an administrative permit amendment, the Commission shall take final action on the request and may amend the permit without providing notice to the public provided the director designates any such permit amendments as having been made pursuant to this section.

(d) For federal oversight sources, the Commission shall submit a copy of the administrative permit amendment to USEPA.

History: 2005

24.0535 Permit modifications.

(a) Upon receipt of an application for a permit modification which does not qualify as an administrative permit amendment pursuant to section 24.0534 the Commission shall process the application according to whether the requested permit modification is minor or non-minor.

(b) In determining whether a requested modification is minor or non-minor, the Commission shall use the following criteria:

(1) Minor permit modifications are those which:

(A) Do not violate any applicable requirement;

(B) Do not involve non-minor changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(C) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(D) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject, including:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the federal Clean Air Act, 42 U.S.C. 7401to 7515; and

(ii) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Clean Air Act;

(E) Are not required by these standards and regulations to be processed as a non-minor modification;

(F) Are not modifications under any provision of title I of the Clean Air Act; Notwithstanding subparagraphs (A) through (F) of this section, minor permit modifications procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such modifications procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by USEPA.

(2) Non-minor permit modifications are those which do not qualify as minor permit modifications or administrative permit amendments and which:

(A) involve any relaxation of permit monitoring terms and conditions;

(B) involve any relaxation of reporting or recordkeeping terms and conditions;

(C) involve violations of any applicable requirement(s); or

(D) involve any relaxation of permit emissions standards or limitations.

History: 2005

24.0536 Permit modification procedures.

(a) Applications for minor permit modifications shall be processed as follows:

(1) An application for a minor permit modification shall be submitted to the Commission and shall include the following:

(A) A description of the change requested, the emissions resulting from the change, and any applicable requirements that will apply if the change occurs;

(B) The source's suggested draft permit;

(C) Certification by a responsible official, consistent with section 24.0504 of these regulations, that the proposed modification meets the criteria for use of the minor permit modification procedures and a request that such procedures be used; and

(D) Completed forms for the permitting authority to use to notify USEPA as required pursuant to section 24.0532.

(2) Within five working days of receipt of a complete permit modification application, the ASEPA shall promptly notify USEPA of the requested modification;

(3) The Commission shall not issue a final permit modification until USEPA has reviewed the modification application for 45 days or until USEPA has notified the Commission that it will not object to issuance of the requested modification, whichever comes first. The Commission shall, within 90 days of receipt of a completed permit modification application or 15 days of USEPA's 45-day review period,

(A) issue the permit modification as proposed;

(B) Deny the permit modification application;

(C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the non-minor modification procedures; or

(D) Revise the draft permit modification and transmit to USEPA the new proposed permit modification as required by these regulations.

(4) The applicant for a minor permit modification may make the change(s) proposed in its application immediately after it files its application. After making such change(s) and until the Commission takes any of the actions specified in subsections (a)(1) – (a)(3), the applicant must comply with both the applicable requirements governing the change and the proposed permit terms and conditions, but the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the applicant fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against.

(b) Applications for permit modifications deemed non-minor shall meet all of the requirements set forth in sections 24.0522, 24.0525, 24.0526, 24.0538 as they apply to permit issuance and to permit renewal. Final permit modifications shall issue within nine (9) months of the receipt by the Commission of a complete application.

History: 2005

24.0537 Emergency Provision.

(a) An emergency constitutes an affirmative defense to any action brought for noncompliance with any technology-based emission limitation, if it can be demonstrated to the executive secretary through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An emergency occurred and the owner or operator of the air pollution emission source can identify the cause or causes of the emergency;

(2) the permitted facility was at the time being properly operated;

(3) During the period of the emergency, the owner or operator of the air pollution emission source took all reasonable steps to minimize levels of emission that exceeded the emission limitations or other requirements in the stationary air pollution source permit; and

(4) The owner or operator of the air pollution emission source submitted notice of the emergency to the executive secretary within two working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective

actions taken. Such notice shall satisfy the prompt reporting of deviations pursuant to section 24.0506;

(b) In any proceedings for enforcement action, the owner or operator of the air pollution emission source seeking to establish the occurrence of an emergency has the burden of proof.

(c) This emergency provision is in addition to any emergency or upset provision in any applicable requirement.

History: 2005

24.0538 Permit termination, suspension, reopening, and amendment.

(a) The Commission, on its own motion or on the petition of any person, may terminate, suspend, reopen, or amend any permit if, after affording the permittee an opportunity for a hearing in accordance with section 24.0514, the Commission determines that:

(1) the permit contains a material mistake made in establishing the emissions limitations or other requirements of the permit;

(2) Permit action is required to assure compliance with the requirements of the Clean Air Act; the Environmental Quality Act, or these Standards and Regulations;

(3) Permit action is required to address additional requirements of the Clean Air Act; the Environmental Quality Act, or these Standards and Regulations;

(4) There is a violation of any condition of the permit;

(5) The permit was obtained by misrepresentation or failure to disclose fully all relevant facts;

(6) The source is not constructed or operated in accordance with the application for the air pollution control permit and any information submitted as part of the application;

(7) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(8) More frequent monitoring or reporting by the permittee is required; or

(9) Such is in the public interest. In determining the public interest, the Commission shall consider the environmental impacts of the proposed action, any unavoidable adverse environmental impacts, alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, any irreversible and irretrievable commitments of resources which would be involved in the proposed action, and any other factors which the Commission shall prescribe by rule; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(b) The Commission shall reopen and amend a permit if it determines that any one of the following circumstances exists:

(1) Additional applicable requirements pursuant to the Clean Air Act or these Standards and Regulations become applicable to a major air pollution emission source with a remaining permit term of three or more years. Such permit reopening shall be completed not later than eighteen months after promulgation or adoption of the applicable requirement. No such permit reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the expiration date of the original permit or any of its terms and conditions has been extended pursuant to section 24.0525;

(2) the permit contains a material mistake or inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or

(3) The permit must be terminated, suspended, or amended to assure compliance with the applicable requirements.

(c) Procedures to reopen and amend an air pollution control permit shall be the same as procedures which apply to initial permit issuance in accordance with section 24.0525 and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(d) On the reopening of a permit the Commission shall provide written notification to the permittee indicating the basis for reopening at least thirty days prior to the reopening date, except that the Commission may provide a shorter time period if it is determined that immediate action on the reopening is required to prevent an imminent peril to public health and safety or the environment;

(e) If requested by the executive secretary, the owner or operator of an air pollution emission source shall submit a permit application or information related to the basis of the permit reopening or those provisions affected by the reopening within thirty days of receipt of the permit reopening notice. An extension of the application submittal may be granted by the executive secretary if the owner or operator can provide adequate written justification for such an extension.

(f) Upon program approval, if the USEPA Administrator notifies the Commission of any cause to terminate, suspend, reopen, or amend a permit issued to a federal oversight source, the Commission shall submit to the USEPA Administrator within 100 days of receipt of such written notification, or within such other times as required by the USEPA, a proposed determination of termination, suspension, reopening, or amendment as appropriate.

(g) Upon program approval, if the USEPA Administrator objects to the Commission's proposed determination in subsection (f), the Commission shall terminate, suspend, reopen, or amend the permit in accordance with the USEPA Administrator's objection within 180 days from receipt of the written objection specified in subsection (f). If the Commission fails to reissue the permit within this 180 days, USEPA will terminate, modify, or revoke and reissue the permit under 40 CFR Part 71 after providing the permittee and the public with notice and opportunity for comment.

History: 2005

24.0539 Public Participation.

(a) If the air pollution emission source is a federal oversight source, the executive secretary shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on draft permits for all permits except administrative permit amendments and permit amendments reflecting minor modifications. Any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public hearing shall indicate the interest of the person filing the request and the reasons why a public hearing is warranted. The executive secretary shall have discretion whether to grant a public hearing.

(b) For all other air pollution emission sources, the executive secretary, at his sole discretion when considering an application for any stationary air pollution source permit, except administrative permit amendments, may provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment if the executive secretary believes that public comment would aid in the Commission's decision. If a public comment period is provided, any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public hearing shall indicate the interest of the person filing the request and the reasons why a public hearing is warranted.

(c) Procedures for public notice, public comment periods, and public hearings shall be as follows:

(1) The executive secretary shall make available for public inspection in at least one location:

(A) Information on the subject matter;

(B) Information submitted by the applicant, except for confidential information pursuant to section 24.0505;

(C) The Commission's analysis and proposed action; and

(D) Other information and documents determined to be appropriate by the executive secretary;

(2) Notification of a public hearing shall be given at least thirty days in advance of the hearing date;

(3) A public comment period shall be no less than thirty days following the date of public notice, during which time interested persons may submit to the executive secretary written comments on:

(A) The subject matter;

(B) The application;

(C) Commission's analysis;

(D) The proposed actions; and

(E) Other considerations as determined to be appropriate by the executive secretary;

(4) Notification of a public comment period or a public hearing shall be made:

(A) by publication in a newspaper of general circulation which is printed and issued at least twice weekly;

(B) to persons on a mailing list developed by the executive secretary, including those who request in writing to be on the list; and

(C) If necessary by other means to assure adequate notice to the affected public;

(5) Notice of public comment and public hearing shall identify:

(A) The affected facility;

(B) The name and address of the permittee;

(C) The name and address of the agency of the permitting authority processing the permit;

(D) The activities involved in the permit action;

(E) The emissions change involved in any permit modification;

(F) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials including any compliance plan, and monitoring and compliance certification reports, and all other material available the Commission which are relevant to the permit decision, except for information which is determined to be confidential;

(G) A brief description of the comment procedures;

(H) The time and place of any hearing that may be held, including a statement of procedures to request a hearing if one has not already been scheduled; and

(I) The availability of the information listed in paragraph (1), and the location and times the information will be available for inspection;

(6) The executive secretary shall maintain a record of persons who make comments and the issues raised during the public participation process and shall provide this information to USEPA upon request and to other persons in accordance with 24.0505(c)(4).

History: 2005

24.0540 General Fee Provisions.

(a) Every owner or operator of an air pollution emission source shall pay annual fees as set forth in section 24.0541.

(b) Annual fees collected pursuant to these Standards and Regulations shall only be used to supplement the Stationary Air Pollution Source Fund pursuant to section 24.0543.

(c) Annual fees for air pollution emission sources required by this chapter shall be submitted by check or money order made payable to the Stationary Air Pollution Source Fund and are not refundable.

(d) Checks returned for any reason shall be considered a failure to pay. The returned checks are subject to an additional $ 25 handling charge. If a returned check results in a late payment, the owner or operator shall be assessed a late payment penalty in accordance with section 24.0537

History: 2005

24.0541 Annual Fees.

(a) Annual fees shall be paid in full within sixty days after the end of each calendar year and within thirty days after the permanent discontinuance of the air pollution emission source;

(b) The executive secretary, upon written request from the owner or operator of an air pollution emission source, may extend the annual fee submittal deadline if the executive secretary determines that reasonable justification exists for the extension. The written request for an

extension shall be submitted at least fifteen days prior to the required submission due date, and include the following information:

(1) Justification for the extension, including a showing that reasonable effort and resources have been and are being utilized in the calculation of annual emissions and the corresponding annual fee as calculated pursuant to this section;

(2) description of the problems being encountered and reasons for any delays in meeting the annual fee deadline;

(3) The current status of emission calculations; and

(4) The projected date of submitting the annual fee. If the executive secretary disapproves an extension for the annual fee submittal, the owner or operator shall pay the required annual fees within thirty days of receipt of the disapproval notification or the original submittal deadline, whichever is later. If the executive secretary approves an extension for the annual fee submittal, the owner or operator shall pay the required annual fees by the extended approval date. Any part of the annual fee that is not paid within the required time shall at once be assessed the late penalty fee pursuant to section 24.0537.

(c) Annual fees due within sixty days after the end of each calendar year shall be based upon the calculated tons of regulated air pollutants emitted during the prior calendar year in which the annual fees are due.

(d) Annual fees due within thirty days after permanent discontinuance of the air pollution emission source shall be based upon the calculated tons of regulated air pollutants emitted after the last calendar year for which annual fees were paid.

(e) Annual fees shall be assessed for each ton of regulated air pollutant emitted by an air pollution emission source except for:

(1) Carbon monoxide emissions;

(2) Fugitive emissions if fugitive emissions are not included in the applicable requirements or AP-42.

(f) For the calendar year 2003 the dollar per ton charge shall be the base rate of $18 per ton for each regulated air pollutant emitted by an air pollution emission source, and 10 times the base rate for each ton of hazardous air pollutants emitted by an air pollution emission source.

(g) The calculated emissions in tons per year shall be determined by using the following parameters:

(1) An emission factor derived from the allowable emission rate;

(2) The actual production, operating hours, amount of materials processed or stored, or fuel usage of the air pollution emission source during the prior calendar year the annual fees are due, as applicable; and

(3) If not already considered in the allowable emission rate, a percentage reduction factor based upon the efficiency of the air pollution control equipment. Other operating parameters of the air pollution emission source may be used in the fee calculation if approved by the executive secretary.

(h) The allowable emission rate referenced in subsection (g)(1) is based upon the emission rate specified in an air pollution control permit or applicable requirement. If the allowable emission rate is not specified in the stationary air pollution source permit or applicable requirement, the appropriate AP-42 air pollutant emission factor shall be used to determine the calculated emissions in tons per year.

(i) the parameters referenced in subsection (g)(2) shall be based upon verifiable documentation presented by the owner or operator of the air pollution emission source. If an owner or operator of an air pollution emission source cannot provide verifiable documentation on the parameters referenced in subsection (g)(2), the maximum allowable production, operating hours, amount of material processed or stored, or fuel usage shall be used in calculating the total annual tonnage of regulated air pollutants emitted from the air pollution emission source. Any fraction of a ton calculated shall be rounded up to the next whole ton to obtain the annual tonnage of each regulated air pollutant subject to annual fees.

(j) The percentage reduction factor referenced in subsection (g)(3) shall be based upon the percentage reduction provided by AP-42 or an

applicable requirement. The executive secretary shall establish the appropriate percentage reduction factor, and may adjust the reduction factor based on actual performance of the air pollution control equipment.

(k) Annual fees shall be calculated on fee worksheets furnished by the executive secretary. If a fee worksheet is not provided for a particular air pollution emission source, the owner or operator of an air pollution emission source shall provide the worksheet, showing the method, assumptions, emissions factors, and calculations used to obtain the calculated emission in tons per year, for each regulated air pollutant emitted.

History: 2005

24.0542 Penalties and Remedies.

(a) Any person who violates any provision of these Standards and Regulations or any term or condition of a permit shall be subject to the procedures, penalties and remedies provided in sections 24.0150 through 24.0166 ASCA.

(b) If any part of the annual fee is not paid within thirty days after the due date, a late payment penalty of five per cent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each calendar month during which any part of the annual fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of five per cent of the then unpaid balance shall accrue and be added thereto.

(c) If any annual fee, including the late payment penalty required by these Standards and Regulations is not paid in full within thirty days after the due date, the director may terminate or suspend any or all or the owner or operator's stationary air pollution source permits, after affording the opportunity for a hearing in accordance with 24.0505.

(d) If any application for permit renewal is submitted after the due date, a late penalty of ten per cent of the permit application fee shall at once accrue and be added thereto. Thereafter, after every twenty day period during which any part of the application fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of ten per cent of the then unpaid balance shall accrue and be added thereto.

(e) If an application for permit renewal is submitted more than thirty days after the due date, the Commission may delay issuance of the permit renewal beyond the expiration date of the existing permit, thereby suspending permission to the owner or operator of the air pollution emission source of any rights granted in the air pollution control permit to emit air pollution.

History: 2005

24.0543 Stationary Air Pollution Source Fund.

(a) All permit annual emission fees, fines, penalties, bail forfeitures, grant funding, and other funds collected or received into the Stationary Air Pollution Source Fund shall be used solely for the direct and indirect costs of administration and implementation of the permit program under ASCA 24.0115, and for providing staff and resources to: assist permit applicants with the applications process; review and act upon permit applications; write permits; implement and enforce permit conditions including legal support; prepare guidance and rules; prepare emissions inventories; monitor air quality; inspect facilities to ensure compliance and offer assistance with pollution prevention alternatives, provide technical assistance to permittees; administer the fund, and any other duties needed to administer the provisions of the Environmental Quality Act and these standards and regulations.

(b) The executive secretary shall maintain independent records and accounts of all revenues and expenditures of the air pollution control special fund.

(c) By February 1 of each year the executive secretary shall determine what base rate shall be used to calculate annual fees for the following calendar year pursuant to section 24.0541. The base rate shall be set such that projected revenues generated from annual fees shall equal the total projected program cost, including a contingency of 10%, minus the total projected revenues from all revenue sources except for annual fees (i.e. application fees, penalties, grant funding, etc.) for that year. The base rate shall be calculated in dollars per ton of pollutant and shall be rounded up to the next whole dollar.

(d) If the executive secretary determines that the base rate for the following calendar year must be raised by more than $1 per ton of pollutants above the current year's base rate or if the base

rate shall be raised above $10, the executive secretary shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment. The applicable procedural requirements of 24.0505 shall be used for public notice, public comment periods, and public hearings.

History: 2005

24.0550 Source applicability.

(a) The standards of performance requirements of this Part are additional requirements for considering an application for an air pollution control permit required by Part III.

(b) No air pollution emission source or modification to which the requirements of this Part shall apply shall begin or continue construction, reconstruction, modification, relocation, or operation without an air pollution control permit which states that the air pollution emission source or modification would meet the requirements of this Part.

History: 2005

24.0551 New source performance standards.

(a) Each owner or operator of an air pollution emission source shall comply with all applicable requirements of 40 CFR Part 60, entitled "Standards of Performance for New Stationary Sources."

(b) At such times that USEPA requires owners and operators of solid waste incinerators subject to the permitting requirements of section 129(e) of the Clean Air Act to apply for and obtain federal operating permits under the provisions of 40 CFR Part 71, a copy of the federal permit application shall be sent concurrently to the Commission.

History: 2005

24.0560 Source Availability – permit requirement

(a) The provisions of this Chapter are applicable to any air pollution emission source which emits or has the potential to emit any hazardous air pollutant in any quantity. No air pollution emission source or modification to which the requirements of this Chapter apply shall begin or continue construction, reconstruction, modification, relocation, or operation without a stationary air pollution source permit which states that the air pollution emission source or modification will meet the requirements of this Part.

(b) Every owner or operator of an air pollution emission source shall comply with all applicable requirements of 40 CFR Part 61, entitled "National Emission Standards for Hazardous Air Pollutants," as amended in subsection (d). For purposes of this Part, the term "hazardous air pollutant" shall refer to the pollutants set forth at 40 CFR Part 61, section 1.

(c) Every owner or operator of an air pollution emission source shall comply with all applicable requirements of 40 CFR Part 63, entitled "National Emission Standards for Hazardous Air Pollutants for Source Categories."

(d) Word and phrase substitutions for 40 CFR Part 61: "Administrator" shall mean the Commission, except in 40 CFR 61 sections 150(a)(4), 152(b)(3), and 154(d).

(e) At such times that USEPA requires owners and operators of major sources of hazardous air pollutants to apply for and obtain federal operating permits under the provisions of 40 CFR Part 71, a copy of the federal permit application shall be sent concurrently to the Commission.

History: 2005

[End Of Title 24 – Chapter 5]

TITLE 24 – CHAPTER 06 – PESTICIDE REGULATION

Sections

I. *GENERAL PROVISIONS*

24.0601 Words in singular form.

Words used in the singular form in this chapter shall include the plural, and vice versa as the case may be.

History: Rule 3-85, eff 9 Jul 85, § 1.

24.0602 Terms defined and construed.

All terms used in this chapter shall have the meanings set forth for such terms in the Act. In addition, as used in this section the following terms shall have the meanings stated below:

(a) "Act" means the American Samoa Pesticide Act of 1979.

(b) "Agricultural commodity" means any plant or part thereof, or animal or animal. Products, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation or other use by man or animals.

(c) "Certification" means the recognition by a certifying agency that a person is competent and thus authorized to use or supervise the use of restricted use pesticides.

(d) "Certification standard" means a requirement for certification.

(e) "Common exposure route" means a likely way (oral, dermal, respiratory) by which a pesticide may reach and/or enter the organism.

(f) "Forest' means a concentration of trees and related vegetation in nonurban areas sparsely inhabited by and infrequently used by humans, characterized by natural terrain and drainage patterns.

(g) "Hazard" means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation: the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

(h) "Host" means any plant or animal on or in which another lives for nourishment, development, or protection.

(i) "Nontarget organism" means a plant or animal other than the one against which the pesticide is applied.

(j) "Ornamental'' means trees, shrubs, and other plantings in and around habitations generally, but not necessarily located in urban and suburban areas, including residences, parks, streets, retail outlets, industrial and institutional buildings.

(k) "Pesticide vendor" means any person selling pesticides for general and/or restricted use.

(l) "Practical knowledge" means the possession of pertinent facts and comprehension together with the ability to use them in dealing with specific problems and situations.

(m) "Protective equipment" means clothing of any other materials or devices that shield against unintended exposure to pesticides.

(n) "Qualified pesticide sales manager" means a person in charge of a sales outlet of restricted use pesticides and who has successfully passed an examination to be certified for that position.

(o) "Regulated pest" means a specific organism considered by a state or federal agency to be a pest requiring regulatory restrictions, regulations

or control procedures in order to protect the host, man and/or his environment.

(p) "Sales outlet" means a geographical location within the territory where a stock of restricted use pesticides is kept for sale and where records of such sales are kept.

(q) "Toxicity" means the property of a pesticide to cause any adverse physiological effects.

History: Rule 3-85. eff 9 Jul 85. § 2.

24.0603 Administration.

The director is authorized to take such action as may be necessary in the administration and enforcement of the Act and this chapter.

History: Rule 3-85. eff 9 Jul 85. § 3.

II. PESTICIDE LICENSING AND SALE

24.0610 Licensing.

(a) All pesticides used and sold in American Samoa must he registered by the EPA.

(b) All pesticides used and sold in American Samoa must be licensed with the Department at Agriculture, American Samoa government.

(1) Application for licensing of a pesticide with ASG must be submitted by a pesticide vendor in writing on forms provided by the Department of Agriculture to the director with copies of labels and labelling at such formulations that would be sold to the public.

History: Rule 3-85. eff 9 Jul § 4.

24.0611 Label requirements.

(a) All pesticides used and sold in American Samoa shall bear a label conforming to the information required by 40 CFRS 162.10.

(b) All statements, words and other information required to appear on the label or labelling of any pesticide shall be in the English language: provided, however, that the director may require the use of the Samoan language version of the label or labelling in addition to English.

History: Rule 3-85. eff 9 Jul 85. § 5.

24.0612 Experimental use permits.

(a) Because of the delicate nature of our island territory pesticides not registered with EPA will not be considered for experimental use permits at any time under any circumstances.

(b) Issuance at experimental use permits shall be confined to pesticides registered by EPA for a use nor previously approved in the registration of the pesticide (SLN). These permits issued by the director shall be valid for a period not longer than one year.

(c). The issuance of an experimental use permit and the subsequent experimentation shall comply with provisions as specified by 40 CFR 172 and its subparts.

History: Rule 3-85. 9 Jul 85. § 6.

24.0613 Restricted use pesticide dealer license.

(a) No person shall sell a restricted use pesticide unless such person has obtained a license from the Department of Agriculture which shall expire on December 31 of each year and shall be renewed on or before January 1 of each year. A license shall be required for each sales outlet located within the territory. Application for a dealer license shall be accompanied by a $25 annual license fee for each printing. Sales outlet and a fee of $10 for each branch sales outlet and shall be on a form prescribed by the director and shall include the name and address of the applicant, the location and address of principal and all branch sales outlets and the names of the qualified pesticide sales manager at each sales outlet.

(b) All sales outlets of restricted use pesticides shall have a qualified pesticide sales manager. The names of such qualified sales manager will be submitted together with the application for a dealer license for the sales outlet. The director will be notified forthwith of any changes of personnel in this position.

(c) Persons seeking to be certified as a qualified, pesticide sales manager shall apply for examination on forms provided by the director. To be certified, an applicant shall ass a written examination at a time and place designated by the director. Examinations shall test the applicant's knowledge of pesticide laws and regulations, pesticide hazards, proper usage, safe storage and distribution, and disposal methods.

History: Rule 3-85. eff Jul 85. § 7.

24.0614 Dealer's records and reports of restricted use pesticide sale.

(a) Licensed dealers shall keep a record of each sale of restricted use pesticides at each sales outlet on

forms provided by the director Such records will be prepared in duplicate and shall show the name and address or purchaser date of sale, identity of the formulation or brand sold and its quantity certification number of the purchaser intended use, and selling clerk's signature.

(b) The original copy of the sales record required under subsection (a) of this section shall be submitted to the director at the end of each month and the duplicate copy shall be kept at the sales outlet where the sales were made for a period of one year.

History: Rule 3-85. eff 9 Jul 95, § 8.

24.0615 Storage display and sales of pesticides.

(a) No pesticide shall be stored, displayed, placed foe-sale, or transported under conditions where food and food containers, feed or any other products are likely to become contaminated and may create a hazard or cause injury to humans, vegetation, crops livestock wildlife, beneficial insects and aquatic life.

(b) Pesticides labeled for pest control in lawns and gardens and other outdoor uses shall be offered for sale only in garden supply centers or in other retail outlets that have separate and distinct sections For sale. Such lawn and garden pesticide products shall also be displayed and sold in a separate section from other home and garden pesticide products formulated and registered for use inside the home. A prominent sign with legible bold print not less than one-half inch in height to read "PESTICIDE PRODUCTS FOR GARDEN AND LAWN" or "OUTDOOR USE ONLY IT IS UNLAWFUL AND NIAY BE HAZARDOUS TO USE INSIDE YOUR HOME", shall be posted in the area where such lawn and garden pesticide products are displayed and sold.

(c) After December 31. 1980, no restricted use pesticides shall be sold to any person who is not certified as an applicator.

History: Rule 3-85 , eff 9 Jul 85. § 9.

24.0616 Disposal of pesticides and empty containers.

(a) Pesticides may not be disposed of so as to create hazard. The owner of such pesticides shall notify or contact the director whenever information or assistance on the proper means of disposal is needed.

(b) Empty containers of pesticides shall be disposed of in a manner consistent with its label or labelling.

History: Rule 3-85. eff 9 Jul 85. § 10.

24.0617 Restricted use pesticides.

(a) Any pesticide or pesticide formulation classified as a restricted use pesticide by the EPA shall be considered as such in this chapter: however, the director under the provision of 24.1207 of the Act, may declare additional pesticides for restricted use within the territory.

(b) The director shall publish a list of all pesticides or pesticide formulations classified for restricted use and amend the list whenever necessary. Such list shall be made available to the public.

History: Rule 3-85, eff 9 Jul 85, § 11

III. PESTICIDE USE

24.0620 Certification of applicators for restricted pesticide use.

The following classes, procedures, conditions and standards for certification shall apply:

(a) Classes of Applicators.

(1) Commercial Applicators.

(A) Agricultural Pest Control

(i) Plant This category includes commercial applicators using or supervising the use pesticides in production of agricultural crops including but not limited to taro, bananas, tobacco, yarns, vegetables, small fruits, tree fruits and nuts, as well as on grasslands and noncrop agricultural lands

(ii) Animal. This category includes commercial applicators using or supervising the use of restricted use pesticides on animals, including but not limited to beef cattle, dairy cattle, swine sheep, horses, goats, poultry and other livestock and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves on: as pesticide applicators, or engaged in large-scale use of

pesticides are included in this category.

(B) Forest Pest Control This category includes commercial applicators using or supervising the use of restricted use pesticides in forests, forest nurseries and forest seed-producing areas.

(C) Ornamental and Turf Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs flowers and turf.

(D) Seed Treatment. This category includes commercial applicators using or supervising the use of restricted use pesticides on seeds.

(E) Aquatic Pest Control. This category includes commercial applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in subdivision H of this subsection.

(F) Right-of-Way Pest Control This category includes commercial applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric powerlines, pipelines, wells and other similar areas

(G) Industrial. Institutional. Structural and Health Related Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides in on, or around food handling establishments, human dwellings, including warehouses and any other structures and adjacent area, public or private: and for the protection of stored, processed or manufactured products.

(H) Public Health Pest Control. This category includes territorial, federal or other governmental employees using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance.

(I) Regulatory Pest Control. This category includes territorial, federal or other governmental employees using or supervising the use of restricted use pesticides in the control of regulated pests.

(J) Demonstration and Research . Pest Control.

(i) This category includes (a) individuals who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration, and (b) persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides. Included in the first group are such persons as extension specialists, commercial representatives demonstrating pesticide products and those individuals demonstrating methods used in public programs. The second group includes territorial, federal and commercial persons conducting field research on or utilizing restricted use pesticides.

(ii) Private Applicators. This class includes certified persons using or supervising the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of person.

(b) Standards for Certification of Commercial Applicators.

(1) Determination of Competency. Competence in the use and handling of pesticides shall be determined upon written

examination and as appropriate, upon demonstration based upon standards which meet those set forth below.

(2) General standards for all categories of certified commercial applicators.

(A) All commercial applicators shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator's certification and the following areas of competency.

(i) Label and Labelling Comprehension.

1 The general format and terminology of pesticide label and labelling

2 The understanding of instructions, warnings, terms symbols, and other information commonly appearing on the pesticide label.

3 Classification of: the product general or restricted.

4 Necessity for use consistent with the label.

(ii) Safety. Factors including:

1. Pesticide toxicity and hazard to man and common exposure routes.

2 Common types and causes of pesticide accidents.

3 Precautions necessary to guard against injury to applicators and other individuals in or near treated areas.

4 Need for and use of protective clothing and equipment.

5 Symptoms of pesticide poisoning.

6 First -aid and other procedures to be followed in case of a pesticide accident.

7 Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken prevent children from having access to pesticides and pesticide containers.

(iii) Environment. The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

1 Weather and other climatic conditions.

2 Types of terrain, soil or other substrates.

3 Presence of fish, wildlife and other non-target organisms

4 Drainage patterns.

(iv) Pests. Factors such as:

1. Common features of pest organisms and characteristics of damage needed for pest recognition.

2. Recognition of relevant pests.

3. Pest development and biology as it may be relevant to problem identification and control.

(v) Pesticides. Factors such as:

1. Types of pesticides.

2. Types of formulations.

3. Compatibility, synergism, persistance and animal and plant toxicity of the formulation.

4. Hazards and residues associated with use.

5. Factors which influence effectiveness or lead to such problems as resistance to pesticides.

6. Dilution procedures.

(vi) Equipment. Factors including:

1. Types of equipment and the advantages and limitations of each type.

2. Uses, maintenance and calibration.

(vii) Application techniques. Factors including:

1. Methods of procedure used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation.

2. Relationship of discharge and placement of pesticide to proper use, unnecessary use, and misuse.

3. Prevention of drift and pesticide loss into the environment.

(viii) Laws and regulations. Applicable territorial and federal laws and regulations.

(3) Special standards of competency for categories of commercial applicators. Commercial applicators in each category shall be particularly qualified with respect to the practical knowledge standards elaborated below.

(A) Agricultural Pest Control.

(i) Plant. Applicators must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is also required concerning soil and water problems, preharvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

(ii) Animal. Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential since most animals will frequently be used as food. Further the applicator must know the relative hazards associated with such factors as formulation application techniques age of animal, stress and extent of treatment.

(B) Forest Pest Control. Applicators shall demonstrate practical knowledge of types of forest, forest nurseries and seed production and pest involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands frequently include aquatic situations and harbor wildlife, the applicator must demonstrate knowledge of control methods, which will minimize the possibility of secondary problems. Proper use of specialized equipment must be demonstrated especially as it may relate to meteorological factors and adjacent land use.

(C) Ornamental and Turf Pest Control.

Applicators should demonstrate a knowledge of problems associated

with the production and Maintenance of ornamental trees, shrubs, plantings and turf, including cognizance of potential phytotoxicity, drift and persistence beyond the intended period of pest control. They must demonstrate special knowledge of hazards to humans, pets and other domestic animals associated with the restricted use pesticides utilized in this category.

(D) Seed Treatment. Applicators should demonstrate knowledge of types of seeds that require chemical protection against pests and special understanding of factors such as seed coloration and carriers and surface active agents which influence pesticide binding a ncl may affect germination. They must demonstrate knowledge of hazards associated with handling and misuse of treated seed such as inadvertent introduction of treated seeds into food and feed use channels, as well as proper disposal of unused treated seeds.

(E) Aquatic Pest Control. Applicators should demonstrate special understanding of the secondary effects which can be caused by in proper application rates, incorrect formulations, and faulty application of restricted use pesticides used in this category. Certified commercial applicators should demonstrate special awareness of the possibility of oxygen depletion and an understanding of possible pesticide effects on fish, birds, beneficial insects and desirable plant and other organisms which may be present in aquatic environments. They should also demonstrate an understanding of limited area application.

(F) Right-of-Way Pest Control .Applicators should demonstrate specific knowledge of a wide variety of environments since rights-of-ways can traverse many different terrains including waterways. They should demonstrate thorough knowledge of problems of runoff, drift, and excessive foliage destruction and should be able to immediately identify target organisms. They should demonstrate special knowledge of the nature of herbicides.

(G) Industrial, Institutional, Structural and Public Health Related Pest Control. Applicators must demonstrate a practical knowledge of a wide variety of pests including their life cycles, types of formulations appropriate for their control, and methods of application that avoid contamination of food, damage and contamination habitat and exposure of people and pets. Since human exposure, including babies, children, and pregnant women, and elderly people is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health related pest control may involve outdoor applicators, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this activities.

(H) Public Health Pest Control. Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employments of such nonchemical control methods as sanitation, waste disposal, and drainage.

(I) Regulatory Pest Control. Applicators shall demonstrate practical knowledge of regulated pests, and the potential impact on the environment of restricted use pesticides used in

suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the territory where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

(J) Demonstration and Research Pest Control. Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum or pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide organism interactions and the importance of integrating pesticide use with other control methods.

(c) Standards for certification of private applicators.

(1) Competence in the use and handling of pesticides by a private applicator will be determined by procedures set forth below. A private applicator must show that he possesses a practical knowledge of operations; proper storage, use, handling and disposal of the pesticides and containers; and his related legal responsibility. This practical knowledge includes ability to:

(A) Recognize common pests to be controlled and damage caused by them.

(B) Read and understand the label and labeling information, including the common name of pesticides he applied; pest(s) to be controlled, timing and methods of application; safety precautions and preharvest or re-entry restrictions; and any specific disposal procedures.

(C) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.

(D) Recognized local environmental situations that must be considered during application to avoid contamination.

(E) Recognized poisoning symptoms and procedures to follow in case of a pesticide accident.

(2) Competence will be determined by written examinations.

(d) Commercial Applicator Recordkeeping Requirements. Commercial applicators in the categories (A) through (J) shall keep records of restricted use pesticides applied on every jobsite of their operation. Such records shall be made available for inspection to the director at his request. Recordkeeping information shall include the items listed in 24.1230, (c), (1)-(12) of the Act.

History: Rule 3-85,eff 9 Jul 85, § 12.

24.0621 Conditions and limitations on applications of restricted use pesticides.

(a) No person shall apply a restricted use pesticide by aircraft except by a special permit issued by the director.

(b) No person shall apply a restricted use pesticide within 20 feet of a water well, stream or any natural body of water except by a special permit issued by the director with the approval of the Environmental Quality Commission after concurrence of the Water Division of the Public Works Department and the Director of Health.

History: Rule 3-85, eff 9 Jul 85, § 13.

24.0622 Enforcement.

(a) Inspections and Examinations.

(1) The director or his duly designated agent is authorized to enter any place or conveyance where pesticides or devices are manufactured, stored, packed, delivered for transportation, transported offered for sale or sold, and to inspect and/or to take samples of such pesticides and devices.

(2) The director or his duly designated agent is authorized to enter any place where restricted use pesticides are sold or used to examine the application techniques and records that are required to be kept.

(b) Notice of Apparent Violation.

(1) If from an examination or inspection, a pesticide or device appears to be in violation of the Act of this chapter, a notice in writing shall be sent to the person against whom legal action is contemplated, giving him an opportunity to offer such written explanation as he may desire. The notice shall state the manner in which the sample fails to meet the requirements of the Act or this chapter.

(2) Any such person may, in addition to his written reply to such notice, file with the director within 20 days of receipt of the notice a written request for a hearing in connection therewith.

(c) "Stop-sale" and "Removal from Sale" Orders.

(1) The director or his designated agent is authorized to issue "stop-sale" and "removal from sale" notices as to any pesticide or device which violates or fails to comply with the provisions of the Act or this chapter and may place written or printed "stop-sale" or "removal from sale" notices on any such pesticide or device.

(2) Upon receipt of such orders, the vendor shall correct the violation and effect full compliance therewith. Such articles shall not hereafter be sold, offered for sale, transferred or disposed of except upon authorization by the director, or his designated agent.

(3) No person shall remove, deface or tamper with any "stop-sale" or "removal from sale" notices.

(d) Seizures.

(1) The director or his designated agent may seize any pesticide or device that is distributed, sold, offered for sale, transported or delivered for transportation in violation of the Act or this chapter.

(2) No notice or hearing shall be required prior to such seizures of a pesticide or device.

History: Rule 3-85. eff 9 Jul 85, § 14.

24.0623 Out of state certificates.

Valid applicator certificates issued by certifying agencies of other states and territories of the United States or employees of the Government Agency Plan (GAP) will be honored as such for use in the territory upon successful review of the local laws and regulations.

History: Rule 3-85, eff 9 Jul 85, § 15.

[End Of Title 24 – Chapter 6]

TITLE 24 – CHAPTER 07 – STORAGE TANKS

Sections

24.0701 Applicability.

(a) The requirements contained in this selection shall apply to all tanks, both above and below ground, which receive, store or distribute petroleum products or other chemicals except as provided in subsection (b) below.

(b) Exemptions. The following are exempt from the provisions of this chapter:

(1) water tanks,

(2) septic tanks,

(3) publicly owned treatment works and

(4) flow through process tanks.

History: Rule 9-88, eff 30 Aug 88, § 1.

24.0702 Definition.

As used in this chapter:

(1) "Above ground storage tank" or "AST" means any one or combination of tanks (including the pipes connected thereto) that are used to contain an accumulation of petroleum products or other chemicals and the volume of which (including the volume of pipes connected thereto) is 90 percent or more above the surface of the ground.

(2) "Cathodic Protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

(3) "Commission" means the Environmental Quality Commission or its duly authorized representatives.

(4) "Compliance certificate" includes a numbered decal, file copy of the decal, and plastic fill pipe tag as described in 24.0713 and 24.0780 of these regulations.

(5) "Corrosion expert" means a person who, by reason of thorough knowledge of physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice control qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks.

(6) "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coating are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping)

(7) "EPA" mean the federal Environmental Protection Agency.

(8) "Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

(A) The owner or operator has obtained all local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

(B) Either:

(i) A continuous on-site physical construction or installation program has begun; or,

(ii) The owner or operator has entered into contractual obligations which cannot be cancelled or modified without substantial loss-for physical construction at the site or installation of the tank system to be completed within a reason time.

(9) "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(10) "Free product" refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolve in water.)

(11) "Impact /Fire valve" are valves located at the surface level of pump islands, beneath each dispenser. The valves are equipped with a spring-loaded mechanism that closes instantly if the top of the valve is sheared of. The valves are also fitted with a fusible link that melts if there is a fire at the pump island. Melting of the link causes the valve to snap shut.

(12) "Implementing agency" means the American Samoa Environmental Protection Agency (ASEPA)

(13) "Interstitial area" means the area between the tank, piping and the secondary containment. For double wall tanks, it is the area between the inner and outer walls. For single wall tanks, it is the area between the tank and the vault or liner.

(14) "Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

(15) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, an and its typically used in the operation of a motor engine.

(16) "New tank system" means any tank installed on or after December 22, 1988 and any tank required by 24.0750(5)(B) to meet the installation standards for new above ground storage tanks as appropriate. (See also "Existing tank system.")

(17) "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under 24.0770.

(18) "Operator" means any person in control of, or having responsibility for, the daily operation of the tank system.

(19) "OSHA" means the federal Occupational Safety and Health Administration.

(20) "Owner" means any person who owns a tank used for storage, use or dispensing of a regulated substance.

(21) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, territory, municipality, commission, political subdivision of a state or territory, interstate body, consortium, joint venture, or commercial entity.

(22) "Petroleum" means crude oil, crude oil fractions, and refined petroleum fractions including motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils kerosene, and heating oils.

(23) "Pipe" or "Piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials.

(24) "Publicly owned treatment works" means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is owned by a state, territory or municipality.

(25) "Regulated substance" means:

(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and

(b) Petroleum, including crude oil or any fraction thereof that is liquid at Standard conditions of temperature and pressure (60 degrees Fahrenheit And 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances

comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils,

(26) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank or associated piping into groundwater, surface water, surface soils, or substance soils.

(27) "Release detection" means determining whether a release of regulated substance has occurred from the tank system into the environment or into the interstitial space between the tank system and its secondary barrier or secondary containment around it.

(28) "Repair" means to restore a tank or component of the tank system that has causes a release of product from the UST or AST system.

(29) "Secondary containment" means a system installed around and underground storage tank that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank) or excavation area (in the case of a liner or vault system) before the release can be detected. For an above ground storage tank it means a wall or dike impermeable to the material stored which will prevent the escape of the stored material outside the wall or dike.

(30) "Septic tank" means a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(31) "Tank" means a stationary device designed to contain an accumulation of regulated substances, which is constructed of non-earthen material (e.g., concrete, steel, plastic) that provide structural support.

(32) "Underground storage tank" or "UST" means any one or combination of tanks (including the pipes connected thereto) that are used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This definition includes any tank situated in an underground area, if the tank is situated upon or above the surface of the floor.

History: Rule 9-88, eff 30 Aug 88, § 1; Rule 3-01, eff 30 Aug 01.

24.0710 Performance standards for new UST systems.

In order to prevent releases due to structural failure, corrosion, or spills and overfills for a long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

(a) Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognize association or independent testing laboratory as specified below:

(1) The tank is constructed of fiberglass-reinforced plastic; or

Note: The following industry codes may be used to comply with paragraph (a)(1) of this section: Underwriters Laboratories Standard 1316, "Standard for Glass- Fiber-Reinforced Plastic Underground Tanks for Petroleum Products", Underwriter's Laboratories of Canada CAN4-S615-M83,Standard for Reinforced Plastic Underground Tanks for Petroleum Products" or American society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

(2) The tank is constructed of steel and cathodically protected in the following manner:

(i) The tank is coated with suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed and allow determination of current operating status as required in 24.0721; and

(iv) Cathodic protection system are operated and maintained in accordance with 24.0721 or according to guidelines established by the implementing agency.

Note: The following codes and standards may be used to comply with paragraph (a)(2) of this section:

(A) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

(B) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems For Underground Storage Tanks";

(C) Underwriters Laboratories Of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03. 1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

(D) National Association of Corrosion Engineers Standard RP-02- 85, "Control of External Corrosion on Metallic Buried, or Submerged Liquid Storage System," and Underwriters Laboratories Standard 58 "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

(3) The tank is constructed of metal without additional corrosion protection measures provided that:

(i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraphs (a)(3)(i) for the remaining life of the tank; or

(4) The tank construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (a)(1) through (a)(3) of this section.

(b) Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The piping is constructed of fiberglass-reinforced plastic; or

Note: The following codes and standards may be used to comply with paragraph (b)(1) of this section:

(A) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe";

(B) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(C) Underwriters Laboratories of Canada Guide UCL-107, "Glass Fiber Reinforced Plastic Pipe and fittings for Flammable Liquids"; and

(D) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

(2) The piping is constructed of steel and cathodically protected in the following manner:

(i) The piping is coated with a suitable dielectric material:

(ii) Field installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of

current operating status as required in 24.0721; and

(iv) Cathodic protection systems are operated and maintained in accordance with 24.0721 or guidelines established by the implementing agency; or

Note: The following codes and standards may be used to comply with paragraph (b)(2) of this section:

(A) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(B) American petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";

(C) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(D) National Association of Corrosion Engineers Standard RP-01-69 "Control of External Corrosion on Submerged Metallic Piping Systems

(3) The piping is constructed of metal without additional corrosion protection measures provided that:

(i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section for the remaining life of the piping; or

(4) The piping construction and corrosion protection are determined by the Implementing agency to be designed to prevent the release or threatened Release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (b)(1) through (3) of this section.

(c) Spill and overfill prevention equipment.

(1) Except as provided in paragraph (c)(2) of this section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(i) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(ii) Overfill prevention equipment that will:

(A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high – level alarm.

(2) Owners operators are not required to use spill and overfill prevention equipment specified in paragraph (c)(1) of this section if:

(i) Alternatives equipment is used that is determined by the implementing agency to be no less protective of human health and the environment than the equipment specified in paragraph (c)(1)(i) or (ii) of this section; or (ii) The UST system is filled by transfers of no more than 25gallons at one time.

(d) Secondary containment. Secondary containment may consist of:

(1) a double walled tank, or

(2) a pit lined with a low permeability barrier or synthetic liner, or

(3) an impermeable vault, or

(4) any other equally effective design approved in writing by the commission;

(e) Emergency Shutoff.

(1) To prevent the product from escaping if the dispenser is knocked over or dislocated by ground heave, an emergency shutoff method described in paragraph (e)(2) of this section must be installed for USTs with pressurized dispensing systems.

(2) Emergency shutoff methods. The owner and operator must equip the UST system with one of the following emergency shutoff methods:

(i) an impact/fire valve with the shear section of the valve installed within ½ inch of the pump. Anchor the entire assembly rigidly to the island to make certain the piping will break at the shear sections, and the spring and thermally actuated device functions to close the valve

(ii) any other equally effective method approved in writing by the implementing agency.

(f) Installation. All tanks and piping must be properly installed in accordance with practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

Note: Tank and Piping system installation practices and procedures described to comply with the requirements of paragraph (d) of this section:

(i) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System"; or

(ii) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage "Systems"; or

(iii) American National Standards Institute Standard B31.3 "Petroleum Refinery Piping," and American National Standards Institute B31.4 "Liquid Petroleum Transportation Piping System.

(g) Certification of Installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance on the UST notification form in accordance with 24.0712.

(1) The installer has been certified by the tank and piping manufacturer's; or

(2) The installation has been certified or licensed by the implementing agency; or

(3) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or

(4) The installation has been inspected and approved by the implementing agency; or

(5) All works listed in the manufacturer's installation checklists has been completed; or

(6) The owner and operated have complied with another method for ensuring compliance with paragraph (f) of this section that is determined by the implementing agency to be no less protective of human health and environment.

History: Rule 3-01, eff 30 Aug 01.

24.0711 Upgrading of existing UST systems.

(a) Alternatives allowed. Not later than December 22, 1998, all existing UST systems must comply with one of the following requirements:

(1) New UST system performance standards under 24.0710;

(2) Upgrading requirements in paragraphs (b) through (d) of this section; or

(3) Closure requirements under Subchapter H, including applicable requirements for corrective action under Subchapter F.

(b) Tank upgrading requirements. Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

(1) Interior lining. A tank may be upgraded by internal lining if:

(i) The lining is installed in accordance with the requirements of 24.0723, and

(ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is

internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(2) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic system meets the requirements of 24.0710(a)(2)(ii),(iii), and (iv) and the integrity of the tank is ensured using one of the following methods:

(i) The tank is internally inspected and assessed to ensure that the tank is structurally sound free of corrosion holes prior to installing the cathodic protection system; or

(ii) The tank has been installed for less than 10 years and is monitored monthly for release in accordance with 24.0742 (4) through (8); or

(iii) The tanks has been installed for less than 10 years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of 24.0742 (3) and six (6) months following the first operation of the cathodic protection system; or

(iv) The tank is assessed for corrosion holes by a method that is determined by the implementing agency to prevent releases in a manner that is no less protective of human health and environment than paragraphs (b)(2)(i) through (iii) of this section.

(3) Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

(i) The lining is installed in accordance with the requirements of 24.0723; and

(ii) The cathodic protection system meets the requirements of 24.0710(a)(2)(ii),(iii),and (iv).

Note: The following codes and standards may be used to comply with this section:

(A) American Petroleum Institute Publication 1631,"Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";

(B) National Leak Prevention Association Standard 631, "spill Prevention, Minimum 10 Years Life Extension of Existing Steel Underground tanks by Lining Without the Addition of Cathodic Protection";

(C) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion On Metallic Buried, or Submerged Liquid Storage Systems": and

(D) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;"

(c) Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contract with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognize association or independent testing laboratory and must meet the requirements of 24.0710(b)(2)(ii) and (iv)

Note: The codes and standards listed in note following 24.0710(b)(2) may be used to comply with this requirement.

(d) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in 24.0710(c).

(e) An emergency shutoff method described in 24.0710(e) of this subchapter.

History: Rule 3-01, eff 30 Aug 01.

24.0712 Notification requirements.

(a) Any owner who brings an underground storage tank system in to use after May 8, 1986, must within 30 days of bringing such tank into use, submit, in the form prescribed in Appendix I of this chapter, a notice of existence of such tank system to the implementing agency to receive such notice.

(b) Owners required to submit notices under paragraph (a) of this section must provide notices to the implementing agency for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation must file a separate notification form for each separate place operation.

(c) All owners and operator s of new UST systems must certify in the notification compliance with the following requirements:

(1) Installation of tanks and piping under 24.0710(f);

(2) Cathodic protection of steel tanks and piping under 24.0710(a) and (b);

(3) Financial responsibility under Subchapter G of this chapter; and

(4) Release detection under 24.0741

(d) All owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with requirements in 24.0710(f)

(e) Beginning October 24,1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under paragraph (a) of this section.

History: Rule 3-01, eff 30 Aug 01.

24.0713 Permits required.

(a) Owners and operators of underground storage tanks and aboveground storage tanks installed prior to the effective date of these regulations shall submit an application for a permit from the commission within 30 days of the effective date.

(b) Prior to construction, installation, modification or repair or any underground or above ground tank, owners and operators shall apply for and obtain a permit from the commission.

(c) Applications for permits shall at minimum include the size of the tank, tank material, description of the leak detection systems, material to be stored, installed procedures, operating procedures and nearby utilities.

(d) The permittee shall notify the implementing agency of any change of ownership within 10 days of such change. The new owner and operator must apply for and obtain a permit from the commission prior to use or operation of the tank

(e) Owners and operators of underground storage tanks meeting the requirements of 24.0710 or 24.0711 shall obtain a compliance certificate pursuant to 24.07890. Before the implementing agency issues a new certificate or renewal to operate an underground storage tank, the implementing agency shall inspect the underground storage tank and determine that it complies with provisions of these regulations

(f) Failure to comply with the conditions of any permit issued by the commission shall be violation of this chapter.

History: Rule 3-01, eff 30 Aug 01.

24.0720 Spill and overfill control.

(a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transferred is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

Note: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with paragraph (a) of this section. Further Guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and combustible Liquids Code.

(b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with 24.0750.

History: Rule 3-01, eff 30 Aug 01.

24.0721 Operation and maintenance of corrosion protection.

All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to stored regulated substances:

(1) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(2) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(A) Frequency. All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the implementing agency; and

(B) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

Note: National Association of Corrosion Engineers Standard RP-02-85, "Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used to comply with paragraph (b)(2) of this section.

(3) UST systems with impressed current cathodic protection system must also be inspected every 60 days to ensure the equipment is running properly.

(4) For UST systems using cathodic protection, records of the operation of the operation of the cathodic protection must be maintained (in accordance with 24.0724) to demonstrate compliance with the performance standards in this section. These records must provide the following:

(A) The result of the last three inspection required in paragraph (3) of this section; and

(B) The results of testing from the last two inspections required in paragraph (2) of this section.

History: Rule 3-01, eff 30 Aug 01.

24.0722 Compatibility.

Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

Note: Owner and operators storing alcohol blends may use the following codes to comply with the requirements of this section:

(a) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends Distribution Terminals and Service Stations."

History: Rule 3-01, eff 30 Aug 01.

24.0723 Repairs allowed.

Owners and operators must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances.

The repair must meet the following requirements:

(a) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

Note: The following codes and standards may be used to comply with paragraph (a) of this section: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines", American Petroleum Institute Publication 1631, Recommended Practice for Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, 10

Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."

(b) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

(c) Metal pipe sections and fittings that have released product as a result of corrosion or damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.

(d) Repaired tanks and piping must be tightness tested in accordance with 24.0742(3) and 24.0743(2) within 30 days following the date of completion of the repair except as provided in paragraphs (d)(1) through (3), of this section:

(1) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in 24.0742(4) through (8); or

(3) Another test method is used that is determined by the implementing agency to be no less protective of human health and the environment than those listed above.

(e) Within 6 months following the repair of any cathodically protected UST system, the protection system must be tested in accordance with 24.0721(2) and (3) to ensure that it is operating properly.

(f) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this section.

History: Rule 3-01, eff 30 Aug 01.

24.0724 Reporting and record keeping.

Owners and operators of UST system must cooperate fully with inspections, monitoring, and testing conducted by the implementing agency, as well as requests for documents submission, testing and monitoring by the owner and operator.

(1) Reporting. Owners and operators must submit the following information to the implementing agency:

(A) Notification for all UST systems, which includes certification of installation for new UST systems,

(B) Reports of all releases including suspected releases, spills and overfills, and confirm releases;

(C) Corrective actions planned or taken including initial abatement measures, initial site characterization, free product removal, investigation of soil and ground-water cleanup, and corrective action plan; and

(D) Repairs made to UST systems; and

(E) A notification before permanent closure or change-in-service.

(2) Recordkeeping. Owners and operators must maintain the following information.

(A) A corrosion expert's analysis of the site corrosion potential if corrosion protection equipment is not used.

(B) Documentation of operation of corrosion protection equipment.

(C) Documentation of UST system repairs.

(D) Recent compliance with release detection equipment.

(E) Results of site investigation conducted at permanent closure.

(3) Availability and Maintenance of Records. Owners and operators must keep the records required either:

(A) At the UST site and immediately available for inspection by the implementing agency; or

(B) At a readily available alternative site and be provided for inspection to the implementing agency upon request.

(C) In the case of permanent closure records required under 24.0773, owners and operators are also provided with the additional alternative of mailing closure records to the implementing agency if they cannot be kept at the site or an alternative site as indicated above.

History: Rule 3-01, eff 30 Aug 01.

24.0730 Installation standards for new above ground storage tanks.

The following standards are applicable to new above ground storage tanks and attached piping installed after the effective date of these regulations. New tanks must be:

(1) equipped with the means to detect and prevent the overfilling of the tank before any discharge can occur; and

(2) equipped with secondary containment adequate to contain the volume of the tank or in the case of multiple tanks in one containment area, adequate to contain the volume of the largest tank.

History: Rule 9-88, eff 30 Aug 88, § 1; Rule 3-01, eff 30 Aug 01.

24.0740 General requirements.

(a) Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground that routinely contains product.

(2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(3) Meets the performance requirements in 24.0742 or 24.0743 with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990 except for methods permanently installed prior to that prior to that date, must be capable of detecting the leak rate or quantity specified for that method in 24.0742,(2), (3), and

(4) or 24.0743(1) and (2) with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) When a release detection method operated in accordance with the performance standards in 24.0742 and 24.0743 indicates a release may have occurred, owners and operators must notify the implementing agency in accordance with 24.0750.

(c) Owners and operators of all UST systems must comply with the release detection requirements of this subchapter by the enactment of this rule.

History: Rule 3-01, eff 30 Aug 01.

24.0741 Requirements for petroleum UST systems.

Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

(1) Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in 24.0742(4) through (8) except that:

(A) UST systems that meet the performance standards in 24.0710 or 24.0711, and the monthly inventory control requirements in 24.0742(1) or (2), may use tank tightness testing (conducted in accordance with 24.0742(3) at least every 5 years until December 22, 1998, or until 10 years after the tank is installed or upgraded under 24.0711(b), whichever is later;

(B) UST systems that do not meet the performance standards in 24.0710 or 24.0711 may use inventory controls (conducted in accordance with 24.0742(1) or (2) and annual tank tightness testing (conducted in accordance with 24.0742(3) until December 22,1998 when the tank must be upgraded under 24.0711 or permanently closed under 24.0770; and

(C) Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with 24.0742(2).

(2) Piping. Underground piping that routinely contains regulated substance must be monitored for releases in a manner that meets one of the following requirements:

(A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(i) Be equipped with an automatic line leak detector conducted in accordance with 24.0743 (1); and

(ii) Have an annual line tightness test conducted in accordance with 24.0743(2) or have monthly monitoring conducted in accordance with 24.0743(3).

(B) Suction piping. Underground piping that conveys regulated substances under must either have a line tightness test conducted at least every 3 years and in accordance with 24.0743(2), or use a monthly monitoring method conduct in accordance with 24.0743(3).No releases detection is required for suction piping that is designed and constructed to meet the following standards:

(i) The below-grade piping operates at less than atmospheric pressure;

(ii) The below-grade piping is slope so that the contents of the pipe will drain back into the storage tank if the suction is released;

(iii) Only one check valve is included in each suction line;

(iv) The check valve is located directly below and as close as practical to the suction pump; and

(v) A method is provided that allows compliance with paragraphs (2)(B)(iii) through (iv) of this section to be readily determined.

History: Rule 3-01, eff 30 Aug 01.

24.0742 Methods of release detection for tanks.

Each method of release detection for tanks used to meet the requirements of 24.0741 must be conducted in accordance with the following:

(1) Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly basis in the following manner:

(A) Inventory volume measurements for regulated substance inputs, withdrawals and the amount still remaining in the tank are recorded each operating day;

(B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(C) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(D) Deliveries are made through a drop tube that extends to within one foot of the bottom;

(E) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and

(F) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

(2) Manual tank gauging. Manual tank gauging must meet the following requirements:

(A) Tank liquid level measurements are taken at the beginning and ending of a period at least 36 hours during which no liquids is added to or removed from the tank;

(B) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of a period;

(C) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(D) A leak is suspected and subject to the requirements of 24.0750 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Weekly Monthly standard tank Standard (average of four tests) capacity (one test)	
550 gallons or less 10 gallons…	5 gallons……
551-1,000 gallons 13 gallons…	7 gallons……
1,001-2,000 gallons 26 gallons…	13 gallons……

(E) Only tanks of 550 gallons or less nominal or capacity may use this as the sole method of release detection. Tanks of 551 to 2,000 gallons nominal capacity may not use the method in place of manual inventory control in 24.0742(1). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subchapter.

(3) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(4) Automatic tank gauging. Equipment for automatic tank gauging that test for the loss of product and conducts inventory control must meet the following requirements:

(A) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and

(B) Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of 24.0742(1)

(5) Vapor Monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(A) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(B) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event a release from the tank;

(C) The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(D) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank:

(E) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(F) In UST excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (5)(A) through (E) of this section and to establish the number and the positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

(G) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(6) Ground-water monitoring. Testing or monitoring for liquids on the ground water must meet the following requirements:

(A) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(B) Ground water is never more than 20feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravel, coarse to medium

sand, coarse silts or other permeable materials);

(C) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground-water conditions;

(D) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(E) Monitoring wells or devices intercept the excavation zone or are so close to it as is technically feasible;

(F) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;

(G) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (6)(A) through (E) of this section and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

(H) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(7) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(A) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;

(B) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;

(i) The secondary barrier around or beneath the UST system consists of artificially constructed materials that is sufficiently thick and impermeable (at least 10-6 cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(ii) The barrier is compatible with the regulated substance stored so that a release from UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(iv) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30days;

(v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,

(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(C) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner is compatible with the substance stored.

(8) Other methods. Any other type of release detection method, or combination of methods, can be used if:

(A) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(B) The implementing agency may approve another method if the owner and operator

can demonstrate that the methods allowed in paragraphs (3) through (8) of this section. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the frequency and reliability with witch it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the implementing agency on its use to ensure the protection of human health and the environment.

History: Rule 3-01, eff 30 Aug 01.

24.0743 Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of 24.0741 must be conducted in accordance with the following:

(1) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10pounds per square inch line pressure within 1 hour. An annual tests of the operation of the leak detector must be conducted in accordance with manufacturer's requirements.

(2) Line tightness testing. A periodic test of piping may be conducted only if it can be detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

(3) Applicable tank methods. Any methods in 24.0742 (5) through (8) may be used if they are designed to detect a release form of any portion of the underground piping that routinely contains regulated substances.

History: Rule 3-01, eff 30 Aug 01.

24.0744 Release detection recordkeeping.

All UST owners and operators must maintain records in accordance with 24.0724 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following :

(1) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for 5 years, or for another reasonable period of the time determine by the implementing agency, from the date of installation;

(2) The results of any sampling, testing, or monitoring must be maintained for at least 1 year, or for another reasonable period of time determined by the implementing agency, except that the results of tank tightness testing must be retained until the next test is conducted; and

(3) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for t least one year after the servicing work is completed.

History: Rule 3-01, eff 30 Aug 01.

24.0750 Leak reporting and correction.

Owners and operators of UST systems must report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency, and follow the procedures in this subchapter for any of the following conditions:

(1) The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water.)

(2) Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and,

(3) Monitoring results from a release detection method required under 24.0742 through 24.0743 that indicate a release may have occurred unless:

(A) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(B) In the case of inventory control, a second month of data does not confirm the initial result

(4) Any leak, spill, overfill, discharge or other release from any tank shall be stopped as soon as practicable. Expenses incurred by others to stop any discharge are the responsibility of the operator.

(5) Any tank from which a release has been detected shall:

(A) be immediately removed from service until the tank is repaired or replaced; and

(B) meet the installation standards for new underground storage tanks contained in 24.0710 or the installation standards for new above ground storage tanks contained in 24.0730 as appropriate before being returned to service.

(6) The owners and operators of any tank from which a release has been detected must immediately clean up all released material to background levels, levels required by other territorial or Federal regulations or to a level approved in writing by the commission which is protective of human health and the environment. The commission will determine the appropriate clean up levels.

Note: Reference 40CFR Part 280Subpart F-Release Response and Corrective Action for UST Systems Containing Petroleum of Hazardous Substances.

(7) In addition to the required cleanup in subsection (6) above, the commission may require the operator to conduct any investigations, monitoring, surveys, testing, or other activities necessary to identify the extent of a release, the effectiveness of a clean up, the material released the source of the leak or the extent of the danger to public health, safety, welfare or the environment.

(8) Owners and operates must develop an Emergency Response Plan (ERP) for the site. The plan must address anticipated emergencies. EPA's and OSHA's hazardous waste operations and emergency response (HazWoper) standards (29 CFR 1910.120, 40 CFR 311) should be used for reference in the development of the plan. The plan at a minimum must include:

(A) pre-emergency planning;

(B) personnel roles, lines of authority, training and communications;

(C) emergency recognition and prevention;

(D) safe distance and places of refuge;

(E) site security and control;

(F) evacuation routes and procedures;

(G) decontamination;

(H) emergency medical treatment and first aid;

(I) emergency alerting and response procedures;

(J) critique of response and follow-up; and

(K) personal protective equipment an emergency equipment.

(9) All waste collected from any spill clean-up must be disposed of properly according to local and federal laws.

History: Rule 3-01, eff 30 Aug 01.

24.0760 Financial Responsibility.

The owners and operators of all underground and above ground storage tanks are responsible for the costs of monitoring for releases, clean up and proper disposal of any soil or water contaminated by releases, tank repair and/or replacement, compensation of third parties for bodily injury or property damage and any other costs incurred from operating a storage tank.

History: Rule 3-01, eff 30 Aug 01.

24.0770 Permanent closure and changes-in-service.

Any tank removed from service prior to the effective date of these rules or any tank to be removed from service for more than 12 months shall be permanently closed. Permanent closure includes:

(1) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (2) and (3) of this section, or within another reasonable time period determined by the implementing agency, owners and operators must notify the implementing agency of their intent to permanently close or make the change-in-service.

(2) To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material.

(3) Continued use of an UST system to store a non-regulated substance is considered a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with 24.0772.

(4) If a UST is permanently closed and removed from the ground, the UST cannot be reused as an AST. The tank must be properly disposed as approved by the implementing agency.

(5) Workers /contractors performing cleaning and/or removal of the implementing agency and requirements meet or exceed OSHAs and EPAs hazardous waste operations (29 CFR 1910.120 : 40-Hour HazWoper.)

Note: The following cleaning and closure procedures may be used to comply with this section:

(A) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";

(B) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

(C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage tanks, may be used as guidance for compliance with this section; and

(D) The National Institute for Occupational Safety and Health, "Criteria for a Recommended Standard * * * Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

History: Rule 3-01, eff 30 Aug 01.

24.0771 Temporary closure.

(a) When a UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with 24.0721, and any release detection in accordance with Subchapter E. Subchapter F must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system

(b) When an UST system is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements:

(1) Leave vent lines open and functioning; and

(2) Cap and secure all the other lines, pumps, manways, and ancillary equipment.

(c) When an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either performance standards in 24.0710 for new UST systems or the upgrading requirements in 24.0711 except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-months in accordance with 24.0770, unless the implementing agency provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with 24.0772 before such an extension can be applied for.

(d) The owner and operator must tag the fill pipe and pipe and pump of the UST system in temporary closure with a status label issued by the implementing agency.

History: Rule 3-01, eff 30 Aug 01.

24.0772 Assessing the site at closure or change-in-service.

(a) Before permanent closure or a change-in-services is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In the selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of

closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in 24.0742(5) and (6) is operating in accordance with the requirements in 24.0742 at the time of closure, and indicates no release has occurred.

(b) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under paragraph (a) of this section, or by any other manner, owners and operators must begin corrective action in accordance with Subchapter F.

History: Rule 3-01, eff 30 Aug 01.

24.0773 Closure records

Owners and operators must maintain records in accordance with 24.0724 that are capable of demonstrating compliance with closure requirements under this section. The results of the excavation zone assessment required in 24.0772 must be maintain for at least 3 years after completion of permanent closure or change-in-service in one of the following ways:

(1) By the owners and operators who took the UST system out of service;

(2) By the current owners and operators of the UST system site; or

(3) By mailing these records to the implementing agency if they cannot be maintained at the closed facility.

History: Rule 3-01, eff 30 Aug 01.

24.0780 UST Certification of Compliance

(a) Content of Compliance Certificates

(1) A compliance certificates includes one decal as described in (2) of this section, one file copy of the decal as described in (3) of this section, and one tag for each tank storing petroleum as described in (4) of this section.

(2) A decal shall have an adhesive-backing and shall be 5 inches wide by 8 inches long containing:

(A) a graphic comprised of the ASEPA logo;

(B) the words, "Underground Storage Tank Facility Compliance Certificates;"

(C) the statement, "This compliance certificate is issued pursuant to Chapter 7, Section 24.0713(f), American Samoa Annotated Code;"

(D) a certificate number affixed mechanically at the time of production;

(3) A file copy hall be paper, 8 ½ inches wide by 11inches long, and shall contain:

(A) in the upper right corner, a certificate number affixed at the time of production;

(B) an unnumbered, black and white facsimile of the compliance certificate;

(C) instructions to the implementing agency to enter the name of the owner, and facility; village, mailing address, facility identification number; name of issuing agency; and date of issue.

(4) A tag made of plastic. It shall bear a facsimile of an unnumbered decal on both Sides and contains the words, "UST COMPLIES WITH ASAC, CHAPTER 7."

(b) Issuing Compliance Certificates

(1) The implementing agency shall provide decals, file copies, tags, and nylon straps for issuance to underground storage tank facilities.

(2) The implementing agency shall issue one decal to the owner or operator of each underground storage tanks meeting the requirements of 24.0710 and 24.0711.

(3) The implementing agency shall issue one matching file copy of the decal to the owner or operator.

(4) The implementing agency shall issue one tag for each petroleum underground storage tank meeting the requirements of 24.0710 and 24.0711, to the owner or operator.

(5) The implementing agency shall issue one locking nylon strap, for each tag issued.

(c) Displaying Compliance Certificates

(1) A decal shall be displayed at the facility in a location visible to the person delivering petroleum to an underground storage tank.

(2) A tag shall be displayed on the fill pipe of each underground storage tank. It shall be attached a nylon strap described in (a)(4) of this section.

(d) Replacing Compliance Certificates

(1) A facility owner or operator may request replacement of a lost, stolen, or destroyed decal, file copy, tag, or strap from the implementing agency. The request must be in in writing, signed under penalty of perjury by the requester, and include the reason for the request and any additional information as required by the implementing agency.

(2) The implementing agency may replace a decal, file copy, tag, or nylon strap to the facility owner or operator upon receipt of a written request. No replacements shall be issued if the implementing agency determines that the request is not due to loss, theft, or destruction of the originals.

(e) Lists of Underground Storage Tank Facilities

(1) The implementing agency shall maintain lists of underground storage tank facilities that have been issued a compliance certificate. The lists shall include, but not to be limited to the name and physical address of the facility, the compliance certificate number, and the name of the owner.

(2) The implementing agency shall provide copies of lists to any person upon request.

(f) Prohibitions

(1) No person shall alter a compliance certificate decal.

(2) Unless authorized by the implementing agency, no person shall alter a compliance certificate file copy. The implementing agency may amend the file copy to reflect changes in the operating permit.

(3) No person shall deliver petroleum to an underground storage tank without verification that the underground storage tank meets the requirements of Section 24.0710 or 24.0711. Verification may include one of the following:

(A) viewing a compliance certificate decal displayed at the facility and viewing a fill pipe tag attached to the tank receiving petroleum;

(B) obtaining written verification or lists from the implementing agency confirming that the facility has received a compliance certificate decal and viewing a fill pipe tag attached to the tank receiving petroleum;

(C) obtaining a compliance certificate file copy and viewing a fill pipe tag attached to the tank receiving petroleum

History: Rule 3-01, eff 30 Aug 01.

24.0781 Enforcement.

Enforcement of this chapter shall be in accordance with the applicable provisions of the territorial Environmental Quality Act, 24.0101 et seq. ASCA.

History: Rule 3-01, eff 30 Aug 01.

[End Of Title 24 – Chapter 7]

TITLE 24 – CHAPTER 08 – HAZARDOUS MATERIALS

Sections

24.0801 Purpose.

This chapter establishes the standards and regulations for hazardous wastes and materials transportation, storage, treatment and disposal in American Samoa. The goal of these standards is to prevent pollution and protect the public health and safety and the environment by regulating the use, treatment and handling of all hazardous substances imported or introduced for use in this territory.

History: Rule 02-01, eff 30 Aug 01.

24.0802 Authority.

Pursuant to 24.0101 et seq. ASCA, the executive secretary shall have the authority to manage all hazardous wastes and hazardous materials generated, transported, stored or disposed of within this territory, and may prohibit such generation, transportation, storage or disposal if it is determined that such activities will endanger public health and safety or the environment, or where such activities are not performed in accordance with the regulations set forth in this chapter.

History: Rule 02-01, eff 30 Aug 01.

24.0803 Applicability.

Any person who imports, handles, uses, transports, generates, stores or disposes of a hazardous substance, as defined in section 24.0804, must comply with the standards set forth in this chapter.

History: Rule 02-01, eff 30 Aug 01.

24.0804 Definitions.

As used in this chapter:

(1) "Acutely hazardous waste" means the hazardous wastes identified in Appendix A of these standards and regulations, which are appended

hereto and incorporated by reference herein. In addition, those toxic substances set forth at 40 CFR 261.33(f) shall also be considered acutely hazardous wasters for purposes of this chapter.

(2) "ASEPA" means the American Samoa Environment Protection Agency.

(3) "Compatibility" means the property of a material or waste that permits its use with other materials or wastes without resulting in a present threat to public health and safety or the environment.

(4) "Discharge" includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, placing or dumping of hazardous substances into or on any land or water so that such hazardous substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. Such term excludes continuous or anticipated intermittent discharges from a point source allowed under a NPDES permit or other permit issued by ASEPA.

(5) "Disposal" means the placement or destruction of toxic, radioactive, or other wastes; surplus or banned pesticides or other chemicals; polluted soil; and drums containing hazardous materials from removal actions or accidental releases. Disposal may be performed, as approved by ASEPA, through use of secure landfills, surface impoundments, land farming, deep-well injection, ocean dumping, or incineration.

(6) "Executive director" means the executive director of the Environment Quality Commission and the director of the American Samoa Environment Protection Agency (ASEPA).

(7) "Generator" means any person, by site, whose act or process produces hazardous waste identified in the manner required by section 24.0814 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

(8) "Hazardous material" means the materials regulated by the U.S. Department of Transportation that require special handling and controls.

(9) "Hazardous substance" means either a "hazardous material" or "hazardous wastes" or both, as defined in these standards and regulations.

(10) "Hazardous wastes" means solid waste, or a combination of solid wastes determined to be hazardous under 24.0814 of this chapter which, because of its quantity, concentration, or physical, chemical or infectious characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness, or pose substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed or otherwise managed.

(11) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(12) "Material safety data sheet (MSDS) " means a document that presents information, required under U.S. Occupational Safety and Health Act standards, on a chemical's physical properties, health effects, and use precautions.

(13) "PCB Article means any manufactured article, other than a PCB container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. Articles include capacitors, transformers, electric motors, pumps, pipes, and other manufactured items (1) that are formed to a specific shape or design during manufacture, (2) that have end-use functions dependent in part or in whole on the shape or design during end-use, and (3) that have either no change of chemical composition during end-use or only changes of composition having no commercial purpose separate from that of the PCB article.

(14) "PCB item" means any PCB article, PCB article container, PCB container, or PCB equipment that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

(15) "PCBs (polychlorinated biphenyls) " means a group of toxic, persistent chemicals used in

transformers and capacitors for insulation and in gas pipeline systems as a lubricant.

(16) "Person" means an individual, a corporation, a partnership, a trust, an association, or any other private entity or any public body or officer, employee, agent, department, or instrumentality of the U.S Government or of a foreign government.

(17) "Regulated medical waste (RMW) " means waste that is produced as the direct result of patient care at a health care facility and that has the potential to endanger individual or community health, welfare or the environment if improperly managed.

(18) " Release" means spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous substances, pollutants, or contaminants, but excluding:

(A) A release that results in exposure of persons solely within a workplace, for which exposure such persons may assert a claim against their employer;

(B) Emissions from the engine exhaust of a motor vehicle, rolling stock, an aircraft, a vessel, or a pipeline-pumping station engine and from the normal application of fertilizer.

(19) "Solid waste" means garbage, refuse, sludge, hazardous waste and other discarded materials resulting from industrial and commercial operations and from community activities, including sludge from a wastewater treatment plant, but does not include other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluent, dissolved material in irrigation return flows, or other common water pollutants.

(20) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a hazardous waste to neutralize the waste or to recover energy or material resources from the wastes, or to render such waste non-hazardous or less hazardous; safer to transport, store, or dispose of; amenable to recovery or to storage; or reduced in volume.

History: Rule 02-01, eff 30 Aug 01.

24.0805 Matter incorporated by reference.

(a) Any document or portion thereof incorporated by reference in this chapter is included in this part as though it were printed in full. When only a portion of a document is referenced, this chapter incorporates only that referenced portion of the document and the remainder is not incorporated.

(b) All incorporated materials are available for inspection in the office of the American Samoa Environment Protection Agency (ASEPA) located in the Executive Offices Building, Village of Utulei, American Samoa.

History: Rule 02-01, eff 30 Aug 01.

24.0806 Enforcement.

Except as specifically provided herein, enforcement of the regulations set forth in this chapter shall be in accordance with the applicable provisions of the territorial Environment Quality, 24.0101 et seq. ASCA.

History: Rule 02-01, eff 30 Aug 01.

24.0807 Severability.

If any provisions of these regulations or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or application of any other part of these regulations which can be given effect without the invalid provisions or application, and to this end the provisions of these regulations and the various applications thereof are declared to be severable.

History: Rule 02-01, eff 30 Aug 01.

24.0810 Introduction and identification of hazardous materials

(a) Introduction.

(1) For all hazardous materials imported or otherwise introduced for use in this territory, the executive secretary shall manage, and have the discretion to prohibit, the procurement, use, storage or transportation of all materials that, because of their hazardous nature, toxicity, or other

harmful characteristics, will endanger public health and safety and the environment.

(2) An MSDS shall be used to develop and document the presence in the territory of materials which might endanger public health and safety and the environment if improperly procured, used, stored, or transported or otherwise mismanaged.

(b) Identification. Hazardous materials imported or introduced for use in American Samoa shall be properly identified using the MSDS and one or more of the following types of information:

(1) Labeling [according to USDOT (49 CFR 172E) or NFPA specifications];

(2) Common name;

(3) Scientific or chemical name;

(4) Chemical Abstract Service (CAS) number

History: Rule 02-01, eff 30 Aug 01.

24.0811 Employee training

(a) All persons who are involved with the handling, treatment, storage, or cleanup of hazardous or toxic wastes, pesticides, or hazardous substances as discussed in these standards and regulations shall have the level of knowledge required to perform their tasks safely and in a way that preserves the environment. Before engaging in these activities, such persons shall receive the following training to ensure that they are able to perform their tasks in an environmentally safe manner:

(1) For workers engaged in processes that generate hazardous waste and whose duties are limited to collection and staging waste, employers shall provide a basic course on the properties and dangers of hazardous waste and on proper handling procedures and emergency-response procedures;

(2) For workers engaged in managing the collection and the storage or disposal of hazardous waste and for the workers engaged in storage, treatment, or disposal activities, employers shall provide training which covers the basic course material, including specialized training in the requirements for treatment, storage, and disposal;

(3) For the workers and managers whose responsibilities include responding to releases and cleaning up of releases of hazardous materials and wastes, employers shall provide the basic treatment, storage and disposal (TSD) course and additional training in the proper and safe methods for responding to releases and for cleaning up contaminated soil and water;

(4) For the workers engaged in transporting or preparing hazardous waste for transport, employers shall provide training to ensure that their personnel can safely prepare hazardous wastes for transport in accordance with section 24.0821 and sections 24.0830 through 24.0833, as applicable.

(b) The employee's supervisor shall certify the training, and records shall be maintained in the personnel department or at the work site for each individual who requires training. Records of the training shall be maintained for as long as the employee performs the duties for which the training was required or for 10 years, whichever comes first.

(c) Annual refresher training in hazardous waste, pollution control, treatment methods, spill response and cleanup, and emergency procedures shall be conducted for all personnel who are required to receive the initial training. Information on the annual refresher training shall be noted in the training records, and records shall be maintained according to the requirements of subsection (b) of this section.

History: Rule 02-01, eff 30 Aug 01.

24.0812 Hazardous materials management and response plan.

(a) Before hazardous materials are imported, the designated recipient shall develop a written management procedure outlining storage, use, transportation and disposal practices that minimize risks to public health and safety and the environment. Such management plan shall include an ASEPA approved emergency response plan outlining the procedures to be

followed in the event of a spill, discharge or release of hazardous substances into the environment.

(b) Plans shall be submitted to the executive secretary for approval within 15 days of the receipt of hazardous materials. If a plan is not complete or is found to be inadequate by the executive secretary the designated recipient shall be prohibited from any use, distribution and transport of the material until the hazardous material management plan is complete.

History: Rule 02-01, eff 30 Aug 01.

24.0813 Transportation-General requirements.

(a) Transport of hazardous materials to, from, and within this territory shall be conducted under USDOT regulations (49 CFR 172), including regulations for using labels (Subpart E), placards (Subpart F), markings (Subpart D) and containers (49 CFR 178, Subpart J).

(b) Hazardous materials shall be transported to and within the territorial limits of American Samoa using only containers approved by the USDOT and which are compatible with the materials being transported. No container shall be used that is leaking, has deteriorated significantly as a result of rust, is bulging from over-pressure, or is damaged in such a way that materials are liable to leak. Containers that are unacceptable for transport shall be placed in containers approved by USDOT under 49 CFR part 178, or the materials transferred to a container approved by USDOT regulations.

(c) Vehicles and vessels used for transport shall be appropriately sized and shall be compatible with the material being transported and shall be clean and free of debris. General use cargo shall be compatible with the materials being transported and in no case shall incompatible materials be transported on the same vehicle or vessel. Transporters shall ensure that any residues left in the transport equipment is removed and disposed of properly.

(d) Transport equipment shall be identified by signs that are visible on both sides of the vehicle or vessel. The signs shall comply with the requirements of USDOT regulations at 49 CFR 172.101, which are hereby incorporated by reference, and shall indicate the hazard classes of the materials transported. The sizes of the signs shall conform to USDOT regulations at 49 CFR 172.300, which are hereby incorporated by reference, and shall be bilingual (English and Samoan).

(e) Vehicles and vessels transporting hazardous materials shall carry emergency response equipment necessary and sufficient for the initial control of a spill or release, such as absorbent booms and material, rags, fire extinguishers, brooms, and shovels. In the event of a spill or release, the vehicle or vessel operator shall be responsible for notifying ASEPA and DPS and for making the initial response until a qualified HAZMAT response team arrives.

History: Rule 02-01, eff 30 Aug 01.

24.0814 Transportation—Special requirements.

(a) Compressed gases shall be classified and identified as hazardous materials and shall be transported in compliance with the requirements of USDOT regulations set forth in 49 CFR parts 170-179, which are hereby incorporated by reference.

(b) Pesticides. Unused pesticides, discarded pesticides and pesticide residues shall be included in the classification of hazardous materials and shall be transported in compliance with the transportation requirements of section 24.0813.

(c) Transport of regulated medical waste (RMW) shall be carried out as follows:

(1) Filled bags of RMW shall not be transported loose. They shall be stored in rigid puncture-resistant, leak proof containers that will not tip over during transport. Transport containers may be reusable and shall be kept clean through the use of a hospital grade detergent-disinfectant that acts as a mycobacteriacide.

(2) Vehicles used for transporting RMW shall be readily cleanable.

(3) All vehicles used for transporting RMW shall be cleaned weekly or more frequently as needed, using a hospital grade detergent-disinfectant. The detergent-disinfectant

shall be used in strict accordance with the manufacturer's instructions. If a spill occurs, the vehicle shall be cleaned immediately. All vehicles used for transporting RMW shall be cleaned before being used for any other purpose.

(4) All vehicles used for transporting RMW shall carry a kit for spill containment and cleanup that is appropriate for responding to a spill or release of RMW.

(d) Transport of PCB's and PCB items. In addition to the pre-transport requirements for hazardous waste items set forth in section 24.0824, the following requirements shall apply to PCB's:

(1) For each PCB article that is not in a PCB container or in a PCB-article container, the serial number, or other identification if there is no serial number, the date of removal from service for disposal, and the weight in kilograms of the PCB waste in each PCB article shall be marked in accordance with the requirements of section 24.0817(d)(4).

(2) All transport vehicles used for transport of PCB's or PCB items shall be marked in accordance with the requirements of section 24.0813.

History: Rule 02-01, eff 30 Aug 01.

24.0815 Storage-General requirements.

Before being distributed or used, all imported hazardous materials shall be stored in a way that will protect against the unintentional release of the materials to the environment. Where storage is defined as 10% of the reportable quantity or 55 gallons or greater, protective measures shall include:

(1) Segregation of incompatible materials including segregation of all unregulated incompatible materials stored in the same area;

(2) Protection from exposure to weather through storage in an indoor area, including adequate roofs, walls, and floors to prevent rain from reaching PCB's;

(3) Location in an area that if flooded would pose no risk to populated areas or the water supply;

(4) Protection from all sources of heat, fire hazards, and adequate ventilation;

(5) Bilingual warning signs, in both English and Samoan, indicating the type of substances stored and their hazards shall be posted outside the storage area;

(6) Adequate security, including fences, barriers or other means of preventing unauthorized access, and adequate lighting to promote discovery of spills at night and to prevent spills caused by vandalism;

(7) Containers used to store materials shall be in good condition, shall be compatible with the items being stored, and shall be closed at all times while in storage. Containers used to store materials shall be handled in a way that does not cause the containers to rupture or leak;

(8) Inspections. All storage areas shall be inspected weekly to detect leaking or deteriorating containers and to ensure that all emergency equipment is functioning. All leaking containers and their contents shall be transferred immediately to properly marked non-leaking containers, and spilled or leaked materials cleaned up immediately using absorbents or other adequate means. Inspections shall be conducted by facility personnel whose training has been documented and verified in compliance with sections 24.0811. Inspections shall be documented and records kept on the premises for at least one year.

(9) Labeling in accordance with requirements of USDOT regulations set forth in 49 CFR part 172, which are hereby incorporated by reference.

(10) Facility requirements as follows:

(A) All facilities where hazardous substances are accumulated or staged shall be off-limits to unauthorized personnel, and appropriate steps shall be taken to protect the public health and safety;

(B) All facilities where hazardous substances are accumulated or staged, where pollution control devices are operating, or where treatment facilities are located shall have the following devices and equipment for personnel protection:

(i) Eyewash station;

(ii) Shower;

(iii) Emergency communication equipment;

(iv) Fire protection as approved by the fire chief;

(v) Personal protection suits, gloves and boots;

(vi) Spill response equipment appropriate for the amounts and types of materials handled at the facility.

(C) Spill prevention equipment. All facilities that accumulate or stage material characterized as hazardous and having the potential to become hazardous waste if released into the environment shall have appropriate containment and spill-prevention controls for preventing a release. Containment devices shall be capable of holding the content of the largest container or 10 percent of all material accumulated or staged in the area, whichever is greater. Such facilities shall be equipped with weather-protection devices that are sufficient for preventing rain or runoff from entering the facility.

(11) A sign or signs bearing the legend "Danger: Unauthorized Personnel Keep Out" shall be posted at each entrance or active part of a facility and at other locations in numbers sufficient to be seen from any approach. The legend shall be written in English and Samoan and shall be legible from a distance of at least 50 feet. Signs in Samoan and English warning of hazards (e.g., "No Smoking") also shall be posted.

History: Rule 02-01, eff 30 Aug 01.

24.0816 Storage—Hazardous materials and petroleum products.

(a) Hazardous materials

(1) Hazardous materials shall be segregated in an environmentally controlled building in accordance with NFPA specifications or with charts and literature on chemical compatibility. Segregation considerations shall include, at a minimum, categories for flammability, combustibility, corrosivity (Ph-specific), poisons, explosives, reactivity, and toxicity.

(2) A current copy of the MSDS, as noted in section 24.0810, shall be on file before hazardous material issued from the hazardous material facility is used. A copy of the MSDS for each product shall be kept at least at the storage facility.

(b) Petroleum-product storage tanks. In addition to the requirements of 24.0701 et seq. ASAC, tanks used for storing petroleum products shall meet the following requirements:

(1) A tank shall not be used for storing oil unless its material and construction are compatible with the stored material and the conditions of storage;

(2) Visible oil leaks that could result in a loss of oil from tank seams, gaskets, rivets, and bolts in amounts sufficiently large to cause oil to accumulate in diked areas or secondary containment areas shall be corrected promptly;

(3) Mobile or portable oil-storage tanks or drums shall be positioned or located in a way that prevents spilled oil from reaching waters of American Samoa and supplies fresh water (i.e., not over the lens wells or in catchment areas). Secondary means of containment shall be applied as required under 24.0704 ASAC.

(4) Testing, inspections and installation of all underground and above ground storage tanks shall be carried out according to the provisions of 24.0701 et seq. ASAC.

History: Rule 02-01, eff 30 Aug 01.

24.0817 Special storage requirements.

(a) Compressed gas and compressed gas cylinders. Compressed gas shall be classified as a hazardous material and shall be stored in accordance with the general requirements of subsection (a) of this section and the requirements in subsection (b) of this section for storing hazardous materials and petroleum products. Compressed gases and compressed gas

cylinders also shall be stored in compliance with the following requirements:

(1) Cylinders of compressed gas shall be classified and labeled in storage as "filled" or "empty". Empty cylinders are cylinders that have been certified to be empty or residual pressure or those that have been expended but still retain constant pressure. All empty cylinders that have been certified to be void of residual pressure are to be labeled "empty". Filled and empty cylinders shall be separated and so shall any incompatible materials, such as oxygen, which shall be stored 100 feet from acetylene or hydrogen unless separated by an approved firewall.

(2) If a cylinder valve leak is discovered, the valve shall be closed immediately. If the leak continues after the valve is closed, the cylinder shall be moved to an outside area and the appropriate safety officials shall be notified. If the gas is toxic or flammable, it shall be isolated in an area away from buildings and public roads, if possible. Open flames shall not be used to test for leaks in compressed-gas cylinders.

(3) Flame or spark-producing items shall not be used within 50 feet of storage areas for compressed gas. Cylinders of compressed gas shall not be allowed to come in contact with fire, sparks, or electrical circuits.

(b) Storage of pesticides. Pesticides shall be classified as a hazardous material and shall be stored in accordance with the general requirements of 24.0815, the requirements of 24.0816 for hazardous materials and petroleum products, and the requirements of 24.0601 et seq. ASAC.

(c) Storage or medical waste. Medical waste, as defined in section 24.0804(17), intended for disposal shall be securely stored in an enclosed and locked areas under the control of director of medical services.

(d) PCB's and PCB items. In addition to the general requirements in section 24.0815(a), the following special provisions apply to PCB's at concentrations of 50 ppm or greater and to PCB items having PCB concentrations of 50 ppm or greater that are stored for disposal:

(1) Non-leaking and structurally undamaged large PCB high-voltage capacitors and PCB contaminated equipment that have not been drained of free-flowing dielectric fluid may be stored on pallets next to a storage facility that meets the requirements of section 24.0815(a). PCB-contaminated electrical equipment that has been drained of free-flowing dielectric fluid is not subject to the storage provisions of this section. Storage of the items discussed in this paragraph shall be permitted only when the storage facility has immediately available unfilled storage space equal to 10 percent of the volume of the capacitors and equipment stored outside the facility. Any equipment so stored shall be checked weekly for leaks.

(2) No item of movable equipment used for handling PCB's and PCB items in the storage facilities that comes in direct contact with PCB's shall be removed from the area of the storage facility unless it has been decontaminated as specified in the description of appropriate decontamination requirements.

(3) All containers used for storing liquid PCB's shall comply with the following shipping-container specifications of USDOT regulations: 49 CFR 178.80 (specification 5, container without removable head), 178.102 (specification 6D, overpack, with (specification 2S, 178.35) or 2SL (178.35a, polyethylene containers) of 178.116 (specification 17E, container). All containers used for storing non-liquid PCB's shall comply with the specifications of 49 CFR 178.80 (specification 5, container). As an alternative, containers larger than those specified in USDOT specifications 5, 5B, or 17C may be used for non-liquid PCB's if the containers are designed and constructed in a way that will provide as much protection against leaking and exposure to the environment and are of the same relative strength and durability as the USDOT-specification containers.

(4) The date on which the PCB articles and PCB containers are placed in storage shall be marked on the exterior of the articles and containers. Storage containers specified under this section shall have a record that includes the quantity of each batch of PCB's and the date the batch was added to the container.

(5) Secondary containment sufficient to contain twice the volume of the largest container being used or 25% of the total volume of PCB's and PCB items being stored, whichever is greater, is required.

History: Rule 02-01, eff 30 Aug 01.

24.0818 Materials use and operation.

(a) General requirements.

(1) All materials imported to American Samoa shall be used only for the purposes for which they were imported and in accordance with the specific use instructions for the substance.

(2) Persons using hazardous materials shall be trained in the proper use of the substance, as required under section 24.0811.

(3) No hazardous materials shall be used without an MSDS. Supervisors shall inform workers about the dangers, precautions for use, and disposal methods as approved by these standards, for the particular product or substance.

(4) Supervisors shall ensure that suitable protective gear shall be used at all times to prevent exposure of workers to hazardous materials.

(5) Provisions shall be made in compliance with section 24.0815(a)(10) to ensure that workers handling hazardous materials are decontaminated before they leave the work area.

(6) All hazardous materials shall be used in accordance with the requirements of the hazardous materials management plan required under section 24.0812.

(b) Special requirements.

(1) Compressed gases. For the purposes of these standards and regulations, compressed gases are considered hazardous materials and shall be used in accordance with the requirements of section 24.0818.

(2) Pesticides. Use, distribution, certification, labeling and record keeping shall be in accordance with 24.1201 et seq. ASCA and regulations in force pursuant thereto.

(3) Asbestos materials.

(A) Materials containing asbestos shall be used and maintained in compliance with the provisions of the hazardous materials management plan at a minimum, the plan shall include the following information:

(i) the location of the areas that contain friable asbestos;

(ii) the type of asbestos containing material;

(iii) the relative amount of material (e.g., linear feet, square feet).

(B) Asbestos labeling: All areas containing asbestos shall be marked with a bilingual asbestos-identification label in English and in Samoan specifying the potential asbestos hazard, as follows:

CAUTION: ASBESTOS; HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT

(C) Asbestos abatement projects:

(i) Employers shall ensure that no employee is exposed to an airborne concentration in excess of the permissible exposure limit (PEL), as required by and determined under 40 CFR 763.121(c) . The provisions of 40 CFR 763.121 are hereby incorporated by reference in these standards and regulations.

(ii) In work areas where airborne concentrations of asbestos exceed the PEL, employers shall establish a regulated area in

accordance with the requirements of 40 CFR 763.121(e), which is hereby incorporated by reference.

(iii) Exposure monitoring during asbestos-abatement projects shall be carried out in accordance with the requirements of 40 CFR 763.121(f).

(iv) The employer shall adhere to the engineering controls, work practices, and prohibitions of 40 CFR 763.121(g).

(v) The employer shall supply, and require the use of, respirators as required under 40 CFR 763.121(h).

(vi) The employer shall supply, and require the use of, protective clothing for all employees exposed to airborne concentrations of asbestos that exceed the PEL, in accordance with 40 CFR 763.121(i).

(vii) The employer shall provide hygiene facilities and adhere to decontamination practices as required under 40 CFR 763.121(j).

(viii) The employer shall conform to the housekeeping methods and the requirements for asbestos waste disposal of 40 CFR 763.121(l).

(ix) Medical surveillance of employees engaged in asbestos abatement projects shall be conducted in accordance with the requirements of 40 CFR 763.121(m).

(x) The requirements of appendices, A, C, D, and E of 40 CFR 763.121, EPA/OSHA Reference Method, Qualitative and Quantitative Fit Testing Procedures, Medical Questionnaires, and Interpretation and Classification of Chest Roentgenograms, respectively, are mandatory for asbestos-abatement activities and are hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0819 Discharge of hazardous substances.

In the event of a discharge, spill or release of any hazardous substance, including hazardous waste, from any facility where hazardous substances are disposed, kept for use, or stored, the owner or operator of such facility shall be responsible for the clean-up and remediation of the affected areas. In addition, the owner or operator shall:

(1) Take immediate and appropriate action to contain the discharge or release so that hazardous substances are prevented from reaching the waters of American Samoa or any conveyance thereto;

(2) Take other immediate and appropriate action to protect human health, welfare and the environment, like erecting barriers, posting warning signs, or diking off the exposed areas;

(3) Notify the AS-EPA, TEMCO, Public Health and the Department of Public Safety (DPS) of the discharge or release. The notice required by this section shall include:

(A) The chemical name or identity of any substance involved in the release;

(B) An estimate of the quantity of any such substance released;

(C) The time and duration of the release;

(D) The medium or media into which a release occurred;

(E) Any known or anticipated acute or chronic health risks associated with the emergency, and, where appropriate, advice regarding medical attention for exposed individuals;

(F) Proper precautions to take as a result of the release, including evacuation; and

(G) Actions already taken to respond and to contain the release.

(4) Take any other action required by the facility's emergency response plan required under section 24.0812 of these standards and regulations.

History: Rule 02-01, eff 30 Aug 01.

24.0820 Hazardous waste management and emergency response plans.

(a) Before engaging in any of the activities regulated in Part II of these standards and regulations, generators, transporters and owners or operators of storage and disposal facilities shall develop both a written waste management plan and emergency response plan to minimize the risks

to human health and safety and to the environment associated with their activities.

(b) The plans required under subsection (a) shall be submitted to the executive secretary for approval within 90 days of the effective date of these standards and regulations. If a plan is not complete or the executive secretary finds a plan to be inadequate, the party submitting such plan(s) shall be prohibited from generating, transporting, storing or disposing of hazardous wastes until such plan(s) are completed to the satisfaction of the executive secretary.

History: Rule 02-01, eff 30 Aug 01.

24.0821 Hazardous waste determination.

(a) A person who generates a solid waste, as defined in this chapter, must determine if that waste is a hazardous waste using the following method:

(1) First, determine whether the waste is excluded from regulation according to the method set forth in 40 CFR 261.4, which is hereby incorporated by reference;

(2) Second, determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261, which is hereby incorporated by reference;

(3) For purposes of compliance with this chapter, or if the waste is not listed in subpart D of 40 CFR part 261, the generator must determine whether the waste is identified by either:

(A) testing the waste according to the methods set forth in subpart C of 40 CFR part 261; or

(B) applying knowledge of the hazard characteristic(s) of the waste in light of the materials or the processes used.

(b) If a waste is determined to be hazardous, the generator must abide by these standards and regulations as they apply to the particular waste generated, and comply with the provisions of 24.0820 relating to preparation, maintenance and approval of hazardous waste management and emergency response plans.

History: Rule 02-01, eff 30 Aug 01.

24.0822 Manifest requirements-Generators.

(a) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a "Uniform Hazardous Waste Manifest" on USEPA form 8700-22 (Appendix B-1), and, if necessary, on USEPA form 8700-22A (Appendix B-2), according to the instructions in the appendix to 40 CFR 262 (Appendix B-3). Appendices B-1, B-2, and B-3 shall be appended hereto and incorporated by reference in these regulations. The generator shall designate on the manifest a facility permitted to handle that waste described on the manifest.

(b) The generator must prepare sufficient copies of the manifest to provide the generator, each transporter, and the designated facility with one copy each. For each manifest used by the generator, the generator must:

(1) sign the manifest certification by hand;

(2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;

(3) retain one copy of the manifest

(c) In the event the transporter is unable to deliver the waste to the designated facility, the generator must designate another facility or instruct the transporter to return the waste.

(d) For shipments of hazardous waste that are transported to the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(e) Content of the manifest. The manifest prepared by the generator shall contain the following information:

(1) Type of waste.

(2) Name of waste.

(3) Hazard class of waste.

(4) Amount of waste in gallons or pounds.

(5) Information on compatibility of hazardous wastes.

(6) Hazardous-waste code.

(7) Flashpoint of waste.

(8) Ph of waste.

(9) Handling precautions.

(10) Cleanup procedures.

(11) Required response equipment.

(12) Emergency telephone numbers and contact points for local fire, environment and safety personnel.

(13) Name of the generator of the waste.

(14) Special storage requirements.

(15) Disposal restrictions or requirements.

(16) Designated destination of the waste and alternative destination.

History: Rule 02-01, eff 30 Aug 01.

24.0823 Pre-transport requirements.

(a) Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable United States Department of Transportation (USDOT) regulations on packaging under 49 CFR parts 173, 178, and 179.

(b) Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable USDOT regulations on hazardous materials under 49 CFR Part 172.

(c) Marking.

(1) Before transporting or offering hazardous waste for transport off-site, a generator must mark each package of hazardous waste in accordance with the applicable USDOT regulations on hazardous materials under 49 CFR part 172.

(2) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:

"HAZARDOUS WASTE – Federal Law Prohibits Improper Disposal. If found, contact the nearest public safety authority or the ASEPA.

Generator's Name and Address _____,

Manifest Document Number _____."

(d) Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to USDOT regulations for hazardous materials under 49 CFR part 172, subpart F.

(e) Accumulation.

(1) A generator may accumulate hazardous waste on-site for 180 days or less without a permit from the commission provided that the waste is placed:

(A) In containers and the generator complies with subpart W of 40 CFR part 265; and or

(B) In tanks and the generator complies with subpart J of 40 CFR part 265, except section 265.197(c) and section 265.200; and or

(C) On drip pads and the generator complies with subpart W of 40 CFR part 265 and maintains the following records at the facility:

(i) A description of the procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(ii) Documentation of each waste removal, including the quantity of waste removed from the drip pad and sump or collection system and the date and time of removal.

(2) A generator who accumulates hazardous waste for more than 180 days is an operator of a storage facility and is therefore subject to the requirements of 40 CFR parts 264 and 265 and the permit requirements of 40 CFR part 270, unless he has been granted an extension in writing by the executive secretary. Such extension may be granted by the executive secretary if hazardous wastes must remain on-site for longer than 180 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive secretary on a case-by-case basis.

(3) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste (listed in Appendix A and in 40 CFR 261.33(f)) in containers at or near the point of generation where wastes initially accumulate without complying with paragraph (e)(1) of this section, provided that he:

(A) uses only containers which are free of leaks and in good condition; and

(B) uses containers which are lined with materials which will not react with, and are otherwise compatible with, the hazardous wastes to be stored; and

(C) ensure that containers holding hazardous wastes are always closed during storage, except when it is necessary to add or remove waste;

(D) marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(4) A generator who accumulates either hazardous waste or acutely hazardous waste in excess of the amounts set forth in subparagraph (3) of this section at or near the point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (e)(1) of this section and any other applicable sections of this chapter. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(f) Hazardous waste residues in containers. Hazardous waste remaining in an empty container or in an inner liner removed from an empty container is not subject to regulation under the hazardous waste requirements of these standards and regulations. A container shall be considered "empty" if:

(1) the container held a quantity of non-acute hazardous waste and all wastes have been removed that can be removed using the common practices for removing materials from that type of container (i.e. pouring, pumping, and aspirating), and no more than 2.5 centimeters (1 inch) of residue remains on the bottom of the inner liner; or

(2) No more than 3 percent by weight of the total capacity of the container remains in the container or the inner if the container is larger than 110 gallons, or less; or

(3) No more than 0.3 percent by weight of the total capacity of the container remains in the container or the inner liner if the container is larger than 110 gallons; or

(4) The container previously held a compressed gas and the pressure in the container approximates atmospheric pressure; or

(5) The container previously held an acute hazardous waste and one of the following applies:

(A) The container or inner liner has been triple-rinsed with a solvent capable of removing the commercial chemical product or the manufacturing chemical intermediate (a chemical used in manufacturing a commercial chemical product); or

(B) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or in tests conducted by the generator, to achieve an equivalent level of removal; or

(C) In the case of a container, the inner liner that prevented the commercial chemical product or the manufacturing chemical intermediate from contacting the container has been removed.

History: Rule 02-01, eff 30 Aug 01.

24.0824 Recordkeeping and reporting.

(a) A generator must keep a copy of each manifest signed in accordance with section 24.0822 or three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with section 24.0821 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage or disposal.

(c) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 90 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the executive secretary.

History: Rule 02-01, eff 30 Aug 01.

24.0825 Exports of hazardous wastes.

The export of hazardous wastes by a generator shall be allowed in accordance with the requirements of 40 CFR part 262 subpart E, which are hereby incorporated by reference in these standards and regulations.

History: Rule 02-01, eff 30 Aug 01.

24.0826 Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this chapter, provided that he triple rinses each emptied pesticide container and otherwise complies with the provisions of 24.0601 et seq. ASAC.

History: Rule 02-01, eff 30 Aug 01.

24.0830 Scope.

(a) The regulations in this subpart establish standards that apply to persons transporting hazardous waste within this territory, is such transportation requires use of a manifest. Persons transporting hazardous waste out of this territory or between this territory and the United States must comply with the provisions of 40 CFR part 263.

(b) These regulations do not apply to on-site transportation of hazardous waste by generators or by owners or operators or permitted hazardous waste management facilities.

History: Rule 02-01, eff 30 Aug 01.

24.0831 Manifest requirements-Transporters.

(a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of 24.0822.

(b) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

(c) The transporter must ensure that the manifest accompanies the hazardous waste.

(d) A transporter who delivers a hazardous waste to another transporter or to the designated facility must:

(1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

(2) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

(3) Retain one copy of the manifest in accordance with section 24.0833; and

(4) Give the remaining copies of the manifest to the accepting transporter or designated facility.

History: Rule 02-01, eff 30 Aug 01.

24.0832 Compliance with the manifest.

(a) The transporter must deliver the entire quantity of the hazardous waste that he has accepted from a generator or another transporter to:

(1) the designated facility listed on the manifest; or

(2) the alternate designated facility if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) the next designated transporter; or

(4) the place outside this territory designated by the generator.

(b) If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

History: Rule 02-01, eff 30 Aug 01.

24.0833 Recordkeeping

A transporter of hazardous waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

History: Rule 02-01, eff 30 Aug 01.

24.0834 Hazardous waste discharges.

(a) In the event of a discharge of hazardous waste during transportation, the transporter shall take appropriate immediate action to protect human health and the environment, e.g., notify the local response authorities and dike off the discharge area.

(b) An air, highway or water transporter who has discharged hazardous waste within this territory must:

(1) notify Public Health, DPS, TEMCO, and the ASEPA; and

(2) report in writing as required under 49 CFR section 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590;

(3) give notice, if required by 49 CFR 171.15, to the National Response Center (800-424-8802 or 202-426-2675), and

(4) take any other action required by the emergency response plan required under section 24.0820 of this chapter.

(c) A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by federal or local officials so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

History: Rule 02-01, eff 30 Aug 01.

24.0840 Treatment, storage and disposal facilities.

(a) An owner or operator of a facility which receives hazardous waste for treatment, disposal, or storage for periods in excess of thirty (30) days shall register with the Administrator of the USEPA and comply with the requirements set forth in 40 CFR part 264, which are hereby incorporated by reference in these standards and regulations.

(b) Manifested shipments of hazardous wastes may be stored in a transfer facility for periods no longer than thirty (30) days, provided the temporary facility complies with 24.0810 and 24.0822 and:

(1) Each container is clearly marked to identify its contents and the date the temporary storage period began;

(2) Owners and operators of such facilities comply with the operating record requirements set forth in 40 CFR 264.73 or 265.73 and store the containers in accordance with the requirements of 24.0824(e); and

(3) such facilities prepare and maintain the emergency response plan required under section 24.0821 of these standards and regulations.

(c) The following hazardous wastes which are recycled as follows are not "disposed" for purposes of these rules:

(1) Hazardous wastes burned for energy recovery in boilers, industrial furnaces and electric generators, provided:

(A) such wastes are considered to be hazardous solely because they possess the characteristic of ignitability; or

(B) such wastes are considered hazardous because the wastes to be burned are a product of mixing in which the hazardous constituent appears in analysis to be insignificant and not to pose a threat to public health and safety and the environment when burned.

(2) Used oil that exhibits one or more of the characteristics of hazardous waste and is burned for energy recovery in boilers, incinerators, and electrical generators.

(3) Recyclable materials from which precious metals are reclaimed.

(4) Spent lead acid batteries that are reclaimed.

History: Rule 02-01, eff 30 Aug 01.

24.0841 Land disposal of hazardous wastes—Prohibition—Exceptions.

(a) Except as provided in subsections (b), (c) and (d) of this section, land disposal of hazardous wastes is prohibited in this territory.

(b) Small quantities of non-acute hazardous wastes not to exceed 100 Kg may be land-disposed with the express, written permission of the executive secretary if:

(1) an extract of the waste is tested in accordance with the provisions of 24.0842(a) and the extract meets the requirements of 24.0842(a); or

(2) the waste is treated using an appropriate treatment technology under 24.0842(b) and the constituent concentrations in the treatment residue does not exceed the treatment standards required by 24.0842(b).

(c) Persons granted an exemption by the USEPA pursuant to a petition under 40 CFR 268.6 with respect to those wastes or units covered by the petition may land dispose of hazardous wastes, provided they give written notice to the executive secretary.

(d) Small quantities of paints and asbestos not to exceed 100 Kg may be land disposed so long as:

(1) paints are solidified using absorbents or by exposure to air; and

(2) asbestos is placed in leak-proof bags, labeled and buried in an area separate and apart from other types of wastes.

History: Rule 02-01, eff 30 Aug 01.

24.0842 Treatment standards.

(a) A hazardous waste identified in 40 CFR 268.41 may be land disposed in accordance with 24.0841 if an extract from the waste or treatment residue developed using the test method provided by 40 CFR part 61 appendix II does not exceed the value shown in Table CCWE of 40 CFR 268.41 for the waste tested.

(b) A hazardous waste for which a treatment technology is specified under 40 CFR 268.42(a) may be land disposed in accordance with 24.0841 after it is treated using that specified technology or an equivalent treatment method approved by the executive secretary. The executive secretary may approve an alternative treatment procedure only after consulting with and obtaining approval in writing from USEPA.

(c) A hazardous waste identified in 40 CFR 268.43 may be land disposed in accordance with 24.0841 if the constituent concentrations in the waste or treatment residue does not exceed the value shown in Table CCW of 40 CFR 268.43 for any hazardous constituents listed in Table CCW for that waste.

(d) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

(e) If a hazardous waste extract or treatment residue does not meet the standards required by this section, land disposal is prohibited.

(f) If a treatment standard for a particular hazardous waste is not provided by this section, land disposal of that waste is prohibited absent the express, written permission of the executive secretary.

(g) 40 CFR sections 268.41 and 40 CFR 268.43 and tables thereto shall be incorporated by reference in these standards and regulations.

History: Rule 02-01, eff 30 Aug 01.

24.0850 Definitions.

As used in this Part:

(1) "Class location" means, for onshore pipelines, the geographic area that extends 220 yards on either side of the centerline of any continuous ¼ mile length of pipeline. The class location designations referred to in this part shall be those set forth in 49 CFR 192.5(b) through (f), which are hereby incorporated by reference.

(2) "Distribution Line" means a pipeline other than a gathering or transmission line.

(3) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive.

(4) "Gathering Line" means a pipeline that transport gas from a current production facility to a transmission line or main.

(5) "High pressure distribution system" means a distribution system in which the gas pressure in the main is higher than the pressure provided to the customer.

(6) "Low pressure distribution system" means a distribution system in which the gas pressure in the main is substantially the same as the pressure provided to the customer.

(7) "Main" means a distribution line that serves as a common source of supply for more than one service line.

(8) "Maximum actual operating pressure" means the maximum pressure that occurs during normal operations over a period of 1 year.

(9) "Maximum allowable operating pressure" means the maximum pressure at which a pipeline or a segment of pipeline may be operated under this Part.

(10) "Offshore" means beyond the line of ordinary low water along that portion of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters.

(11) "Operator" means a person who engages in the transportation of gas.

(12) "Person" means any individual, firm, joint venture, partnership, corporation, association, State, municipality, territory, cooperative association, and including any trustee, receiver, assignee, or personal representative thereof.

(13) "Pipe" means any pipe or tubing used in the transportation of gas, including pipe-type holders.

(14) "Pipeline" means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies.

(15) "Pipeline facility" means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.

(16) "Service line" means a distribution line that transport gas from a common source of supply to an (a) customer meter or the connection to a customer's piping, whichever is farther downstream, or (b) the connection to a customer's piping if there is no customer meter. A customer meter is the meter that measures the transfer of gas from an operator to a consumer.

(17) "SMYS" means specified minimum yield strength that is:

(A) For steel pipe manufactured in accordance with a listed specification, the yield strength specified as a minimum in that specification; or

(B) For steel pipe manufactured in accordance with an unknown or unlisted specification, the yield strength determined in accordance with 49 CFR 192.107(b), which is hereby incorporated by reference.

(18) "Transmission line" means a pipeline, other than a gathering line, that:

(A) Transport gas from a gathering line or storage facility to a distribution center or storage facility;

(B) Operates at a hoop stress of 20 percent or more of SMYS; or

(C) Transports gas within a storage field.

(19) "Transportation of gas" means the gathering, transmission, or distribution of gas by pipeline or the storage of gas, in or affecting interstate or foreign commerce.

History: Rule 02-01, eff 30 Aug 01.

24.0851 Scope and applicability.

(a) This Part prescribes minimum safety requirements for pipeline facilities and the transportation by pipeline of natural gas, liquefied natural gas, and hazardous liquids inside the territorial limits of American Samoa.

(b) No person may operate a pipeline facility, segment of pipeline, or a relocated, modified or replaced segment of a pipeline unless:

(1) the pipeline or segment has been designed, installed, constructed, initially inspected, and initially tested in accordance with this Part; and

(2) the pipeline operator maintains, modifies as appropriate, and follows the plans, procedures, and programs required to be followed under this Part.

History: Rule 02-01, eff 30 Aug 01.

24.0852 Pipeline materials.

(a) As further provided in this section, materials used for pipe and components must be:

(1) able to maintain the structural integrity of the pipeline under temperature and other environmental conditions that may be anticipated.

(2) chemically compatible with any gas or liquid that they transport and with any other material in the pipeline with which they are in contact; and

(3) qualified in accordance with the requirements of this section.

(b) To qualify for use under this chapter, steel pipe must meet the standards set forth under 49 CFR 192.55 and the design standards set forth in 49 CFR 192.105-115, inclusive, which are hereby incorporated by reference.

(c) Plastic pipe may be used under this chapter if it qualifies for use under the provisions of 49 CFR 193.59 and if it meets the design standards set forth in 49 CFR 192.121 through 192.123, inclusive, which are hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0853 Pipeline components-Design

(a) Each component of a pipeline must be able to withstand operating pressures and other anticipated loadings without impairment of its serviceability with unit stresses equivalent to those allowed for comparable materials in pipe in the same location and kind of service. However, if design based upon unit stresses is impractical for a particular component, design may be based upon a pressure rating established by the manufacturer by pressure testing that component or a prototype of the component.

(b) Each component of a pipeline including, but not limited to, valves, flanges, fittings, tapping, metallic components, branch connections, extruded outlets, supports and anchors, and compressor stations, among others, shall meet the standards set forth for such components in Subpart D of 49 CFR Part 192, which is hereby incorporated in these rules.

History: Rule 02-01, eff 30 Aug 01.

24.0854 Joining of materials in pipelines.

(a) Welding

(1) Steel welding must be performed by a qualified welder in accordance with welding procedures qualified to produce welds meeting the requirements of 49 CFR 192 Subpart E. The quality of the test welds used to qualify the procedure shall be determined by destructive testing.

(2) Welding procedures must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.

(3) Welds shall be inspected and tested in a proper manner according to the provisions of 49 CFR 192.241 and 192.243, and, if defects are found, repaired in accordance with 49 CFR 192.245.

(b) Joints

(1) The pipeline must be designed and installed so that each joint will sustain the longitudinal pullout or thrust forces caused by contraction or expansion of the piping or by anticipated external or internal loading.

(2) Each joint must be made in accordance with written procedures that have been proven by test or experience to produce strong gas tight joints.

(3) Each joint must be installed and inspected in accordance with the provisions of 49 CFR Part 192 subpart F, which is hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0855 General construction requirements.

(a) Inspection. Each transmission line or main must be inspected to ensure that it is conducted in accordance with this section, and each component must be inspected to insure that it has not sustained any damage that could impair its serviceability.

(b) Repair. Upon inspection and discovery each imperfection or damage which impairs the serviceability of a pipe shall be repaired in accordance with 49 CFR 192.309 and 192.311, which are hereby incorporated by reference.

(c) Bends and elbows in pipe. Each field bend, wrinkle bend, and wrought steel welding elbow and transverse segments of such elbows shall be comply with the provisions of 49 CFR 192.313 and 192.315, which are hereby incorporated by reference.

(d) Hazard Protection.

(1) The operator must take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides or other hazards that may cause the pipeline to move or to sustain abnormal loads. In addition, the operator must take all practicable steps to protect offshore pipelines from damage by mudslides, water currents, hurricanes, ship anchors and fishing operations.

(2) Each aboveground transmission line or main, not located offshore or in inland navigable waters, must be protected from accidental damage by vehicular traffic, either by placement at a safe distance from traffic or by installing barricades.

(3) Pipelines, including pipe risers, on each platform located offshore or in inland navigable waters, must be protected from accidental damage by vessels.

(e) Installation of pipe.

(1) Pipe to be installed in a ditch shall comply with the provisions of 49 CFR 192.319, which is hereby incorporated by reference.

(2) Plastic pipe shall be installed in accordance with 49 CFR 192.321, which is hereby incorporated by reference.

(f) Casings. Each casing used on a transmission line or main under a highway must comply with the following:

(1) The casing must be designed to withstand the superimposed loads;

(2) If there is a possibility of water entering, the ends must be sealed;

(3) If the ends of an unvented casing are sealed and the sealing is strong enough to retain the maximum allowable operating pressure of the pipe, the casing must be designed to hold this pressure at a stress level of not more than 72 % of SMYS;

(4) If vents are installed on a casing, the vents must be protected from the weather to prevent water from entering the casing.

(g) Underground clearance.

(1) Each transmission line must be installed with at least 12 inches of clearance from any other underground structure not associated with the transmission line. If this clearance cannot be attained, the transmission line must be protected from damage that might result from the proximity of the other structure.

(2) Each main must be installed with enough clearance from any other underground structure to allow proper maintenance and to protect against damage that might result from proximity to other structures or potential hazards.

(h) Cover. Each buried transmission line shall be installed with the minimum level of cover as provided under 49 CFR 192.327, which is hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0856 Corrosion control-External.

(a) Buried or submerged pipelines.

(1) Except as provided in paragraphs (2) and (3) of this subsection, each buried or submerged pipeline must be protected against external corrosion using appropriate corrosion control methods, including the following:

(A) It must have an external protective coating meeting the requirements of subsection (c) of this section;

(B) It must have a cathodic protection system designed to protect the pipeline in accordance with subsection (d) of this section, installed and placed in operation within 1 year after completion of construction;

(C) It must not contain aluminum if that aluminum is exposed to a natural environment with a Ph in excess of 8.0.

(2) An operator need not comply with paragraph (1) of this subsection if both of the following requirements are met:

(A) The operator can demonstrate by tests, investigation, or experience in the area of application, including, at a minimum, soil resistivity measurements and tests for corrosion accelerating bacteria, that a corrosive environment does not exist. However, within 6 months of an installation not in compliance with paragraph (1) the operator shall conduct tests, including pipe-to-soil potential measurements with respect to either a continuous reference electrode or an electrode using close spacing, not to exceed 20 feet, and soil resistivity measurements at potential profile peak locations, to adequately evaluate the potential profile along the entire pipeline. If the tests made indicate that a corrosive condition exists, the pipeline must be cathodically protected in accordance with paragraph (1).

(B) The operator can demonstrate by tests, investigation, or experience that, for a copper pipeline, a corrosive environment does not exist, and for a temporary pipeline having an operating period of less than five years, that any corrosion which may occur will not be detrimental to public safety.

(3) This subsection does not apply to electrically isolated, metal alloy fittings in plastic pipelines, if:

(A) for the size of the fitting to be used the operator can show by test, investigation, or experience in the area of application that adequate corrosion control is provided by the alloy composition; and

(B) the fitting is designed to prevent leakage caused by localized corrosion pitting.

(c) Examination of buried and exposed pipeline. Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion if the coating is deteriorated. If external corrosion is found, remedial action must be taken to the extent required by the rules adopted under 24.0859.

(d) Protective coating.

(1) Each external protective coating, whether conductive or insulating, applied for the purpose of external corrosion control must:

(A) Be applied on a properly prepared surface;

(B) Have sufficient adhesion to the metal surface to effectively resist underfilm migration of moisture;

(C) Be sufficiently ductile to resist cracking;

(D) Have sufficient strength to resist damage due to handling and soil stress; and

(E) Have properties compatible with any supplemental cathodic protection.

(2) Each external protective coating which is an electrically insulating type must also have low moisture absorption and high electrical resistance.

(3) Each external protective coating must be inspected just prior to lowering the pipe into the ditch and backfilling, and any damage detrimental to effective corrosion control must be repaired.

(4) If coated pipe is installed by boring, driving, or other similar method, precautions must be taken to minimize damage to the coating during installation.

(e) Cathodic protection.

(1) Each cathodic protection system required by this subpart must provide a level of cathodic protection that complies with one or more of the applicable criteria contained in Appendix D of 49 CFR 192 Subpart I, which is hereby incorporated by reference. If none of these criteria is applicable, the cathodic protection system must provide a level of cathodic protection at least equal to that provided by compliance with one or more of these criteria.

(2) If amphoteric metals are included in a buried or submerged pipeline containing a metal of different anodic potential, then:

(A) The amphoteric metals must be electrically isolated from the remainder of the pipeline and cathodically protected; or

(B) The entire buried or submerged pipeline must be cathodically protected at a cathodic potential that meets the requirements of appendix D of 49 CFR 192 Subpart I.

(3) The amount of cathodic protection must be controlled so as not to damage the protective coating or the pipe.

(f) Monitoring.

(1) Each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of this section.

(2) Each cathodic protection rectifier or other impressed current power source must be inspected six times each calendar year, but with intervals not exceeding 2 and ½ months, to insure that it is operating properly.

(3) Each reverse current switch, each diode, and each interference bond whose failure would jeopardize structure protection must be electronically checked at least once each calendar year, but with intervals not exceeding 15 months.

(4) Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring.

(5) After the initial evaluation required by subsections (a)(2) and (a)(3) of this section, each operator shall, at intervals not exceeding 3 years, reevaluate its unprotected pipelines in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other means.

(g) Electrical isolation.

(1) Each buried or submerged pipeline must be electrically isolated from other underground metallic structures, unless the pipeline and the other structures are electrically interconnected and cathodically protected as a single unit.

(2) One or more insulating devices must be installed where electrical isolation of a portion of a pipeline is necessary to facilitate the application of corrosion control.

(3) Except for unprotected copper inserted in ferrous pipe, each pipeline must be electrically isolated from metallic casings that are part of the underground system. However, if isolation is not achieved because it is impractical, other measure must be taken to minimize corrosion of the pipeline inside the casing.

(4) Inspection and electrical tests must be made to assure that electrical isolation is adequate.

(5) An insulating device may not be installed in an area where a combustible atmosphere is anticipated unless precautions are taken to prevent arcing.

(6) Where a pipeline is located in close proximity to electrical transmission tower footings, ground cables or counterpoise, or in other areas where fault currents or unusual risks of lightning may be anticipated, it must be provided with protection against damage due to fault currents or lightning, and protective measures must also be taken at insulating devices.

(h) Testing. External corrosion control test stations and test leads shall be established and maintained in accordance with the provisions of 49 CFR 192.469 and 192.471, which are hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0857 Corrosion control-Internal

(a) General.

(1) Corrosive gas may not be transferred by pipeline, unless the corrosive effect of the gas on the pipeline has been investigated and steps have been taken to minimize internal corrosion.

(2) Whenever any pipe is removed from a pipeline for any reason, the internal surface must be inspected for evidence of corrosion. If internal corrosion is found—

(A) The adjacent pipe must be investigated to determine the extent of internal corrosion;

(B) Replacement must be made to the extent required by the rules incorporated under 24.0859;

(C) Steps must be taken to minimize the internal corrosion.

(3) Gas containing more than 0.1 grain of hydrogen sulfide per 100 standard cubic feet may not be stored in pipe-type or bottle-type holders.

(b) Monitoring. If corrosive gas is being transported, coupons or other suitable means must be used to determine the effectiveness of the steps taken to minimize internal corrosion. Each coupon or other means of monitoring internal corrosion must be checked two times each calendar year, but with intervals not exceeding 8 months.

History: Rule 02-01, eff 30 Aug 01.

24.0858 Corrosion control—-Atmospheric corrosion.

(a) For pipelines installed after 1971, each above-ground pipeline or portion of a pipeline that is exposed to the atmosphere must be cleaned or coated or jacketed with a material suitable for the prevention of atmospheric corrosion. An operator need not comply with this paragraph, if the operator can demonstrate by test, investigation, or experience in the area of application, that a corrosive atmosphere does not exist.

(b) For pipelines installed before August 1, 1971, each operator having an above-ground or portion of a pipeline that is exposed to the atmosphere shall;

(1) Determine the areas of atmospheric corrosion on the pipeline;

(2) If atmospheric corrosion is found, take remedial measures to the extent required by the applicable provisions of the rules adopted under 24.0859.

(3) Clean and either coat or jacket the areas of atmospheric corrosion on the pipeline with a material suitable for the prevention of atmospheric corrosion.

(c) After meeting the requirements of this section, each operator shall, at intervals not exceeding 3 years for onshore pipelines and at least once each calendar year, but with intervals not exceeding 15 months, for offshore pipelines, reevaluate each pipeline that is exposed to the atmosphere and take remedial action whenever necessary to maintain protection against atmospheric corrosion.

History: Rule 02-01, eff 30 Aug 01.

24.0859 Corrosion control—Remedial measures.

Each operator of a segment of pipeline shall take, as applicable; the remedial measures required under 49 CFR 192.483 through 192.489, inclusive, which are hereby incorporated by reference in this chapter.

History: Rule 02-01, eff 30 Aug 01.

24.0860 Corrosion control—Records.

(a) Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system. Records or maps showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode.

(b) Each record or map required by paragraph (a) of this section must be retained for as long as the pipeline remains in service.

(c) Each operator shall maintain a record of each test, survey, or inspection required by any rule pertaining to corrosion control in sufficient to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. These records must be retained for at least 5 years, except that records related to 24.0856(e) and 24.0857(a) must be retained for as long as the pipeline remains in service.

History: Rule 02-01, eff 30 Aug 01.

24.0865 Test Requirements—General.

(a) No person may operate a new segment or pipeline, or return to service a segment of pipeline that has been relocated or replaced, until:

(1) It has been tested in accordance with these standards and regulations to substantiate the maximum allowable operating pressure; and

(2) Each potentially hazardous leak has been located and eliminated.

(b) The test medium must be liquid, air, natural gas, or inert gas that is:

(1) Compatible with the material of which the pipeline is constructed;

(2) Relatively free of sedimentary materials; and

(3) Except for natural gas, nonflammable.

(c) Except as provided in 24.0871(a), if air, natural gas, or inert gas is used as the test medium, the following maximum hoop stress limitations apply:

Class Location	Maximum hoop stress allowed as percentage of SMYS Natural GassAir or Inert Gass
1.....	8080
2.....	3075
3.....	3050
4.....	3040

(d) Each joint used to tie in a test segment of pipeline is excepted from the specific test requirements of these standards and regulations, but each non-welded joint must be leak tested at not less than its operating pressure.

History: Rule 02-01, eff 30 Aug 01.

24.0866 Test requirements—Pipelines.

(a) Steel pipelines to operate at 30 percent or more of SMYS.

(1) Except for service lines, each segment of a steel pipeline that is to operate at a hoop stress of 30 percent or more SMYS must be strength tested in accordance with this subsection to substantiate the proposed maximum operating pressure. In addition, if there is a building intended for human occupancy within 300 feet of a pipeline, a segment of pipeline not less than 600 feet long must be hydrostatic tested to a test pressure of at least 125 percent of maximum operating pressure.

(2) Except as provided in subsection (a)(3) of this section, the strength test must be conducted by maintaining the pressure at or above the test pressure for at least 6 hours.

(3) For fabricated units, components, and short sections of pipe for which a post installation test is impractical, a pre-installation strength test must be conducted by maintaining the pressure at or above the test pressure for at least 4 hours.

(b) Pipelines to operate at hoop stress less than 30 percent of SMYS and at or above 100 psi.

(1) The pipeline operator shall use a test procedure that will ensure discovery of all potentially hazardous leaks in the segment being tested.

(2) If, during the test, the segment is to stressed to 20 percent or more of SMYS and natural gas, inert gas, or air is the test medium—

(A) A leak test must be made at a pressure between 100 p.s.i. (689 kpa) gage and the pressure required to produce a hoop stress of 20 percent of SMYS; or

(B) The line must be walked to check for leaks while the hoop stress is held at approximately 20 percent of SMYS.

(4) During testing the pressure must be maintained at or above the test pressure for at least 1 hour.

(c) Pipelines to operate below 100 p.s.i. (689 kpa) gage.

(1) Except for service lines and plastic pipelines, each segment of a pipeline to be operated below 100 p.s.i (689 kpa) gage must be leak tested in accordance with the following:

(A) The test procedure used must ensure discovery of all potentially hazardous leaks in the segment being tested.

(B) Each main that is to be operated at less than 1 p.s.i. (6.9 kpa) gage must be tested to at least 10 p.s.i. (69kpa) gage and each main to be operated at or above 1 p.s.i. (6.9 kpa) gage must be tested to at least 90 p.s.i (621 kpa) gage.

(d) Plastic pipelines.

(1) Each segment of a plastic pipeline must be tested in accordance with this subsection.

(2) The test procedure must insure discovery of all potentially hazardous leaks in the segment being tested.

(3) The test pressure must be at least 150 percent of the maximum operating pressure or 50 p.s.i. (345 kPa) gage, whichever is greater. However, the maximum test pressure may not be more than three times the pressure determined under 49 CFR 192.121, which is hereby incorporated by reference, and at a temperature not less than the pipe temperature during the test.

(4) During the test, the temperature of thermoplastic material may not be more than 100 deg. F (38 deg. C), or the temperature at which the material's long term hydrostatic strength has been determined under the listed specification, whichever is greater.

(e) Service lines.

(1) Each segment of a service line (other than plastic) must be leak tested in accordance with this section before being placed in service. If feasible, the service line connection to the main must be included in the test; if not feasible, it must be given a leakage test at the operating pressure when placed in service.

(2) Each segment of a service line (other than plastic) intended to be operated at a pressure of at least 1 p.s.i (276 kPa) gage but not more than 40 p.s.i (276 kPa) gage must be given a leak test at a pressure of not less than 50 p.s.i (345 kPa) gage.

(3) Each segment of a service line (other than plastic) intended to be operated at pressures of more than 40 p.s.i (276 kPa) gage must be tested to at least 90 p.s.i (621 kPa) gage, except that each segment of a steel service line stressed to 20 percent or more of SMYS must be tested in accordance with paragraph (b) of this section.

(f) Records. Each operator shall make, and retain for the useful life of the pipeline, a record of each test performed under paragraphs (a) and (b) of this section. The record must contain at least the following information:

(1) The operator's name, the name of the operator's employee responsible for making the test record, and the name of any test company used.

(2) Test medium used.

(3) Test pressure.

(4) Test duration.

(5) Pressure recording charts, or other record of pressure readings.

(6) Elevation variations, whenever significant for the particular test.

(7) Leaks and failures noted and their disposition.

History: Rule 02-01, eff 30 Aug 01.

24.0867 Uprating.

No operator may increase the maximum allowable operating pressures for a pipeline without complying with the regulations set forth in 49 CFR 192.553 through 192.557, inclusive, which are hereby incorporated by reference in this chapter.

History: Rule 02-01, eff 30 Aug 01.

24.0870 Operations—General Provisions.

(a) No person may operate a segment of pipeline unless it is operated in accordance with this section and sections 24.0881 through 24.0883.

(b) Each operator shall keep records necessary to administer the procedures established under 24.0882.

(c) The commission may require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

History: Rule 02-01, eff 30 Aug 01.

24.0871 Operations—Procedural manual.

(a) Each operator shall prepare and follow for each pipeline a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. Appropriate parts of the manual shall be kept at locations where operations and maintenance activities are conducted.

(b) The manual required by this section must include all of the elements set forth in sections 49 CFR 192.605(b) and (c), which are hereby incorporated by reference in this chapter.

History: Rule 02-01, eff 30 Aug 01.

24.0872 Operations—Change in class location.

(a) Change is class location—required study. When an increase in population density indicates a change in class location for a segment of an existing steel pipeline operating at a hoop stress that is greater than 40 percent of SMYS, or indicates that the hoop stress corresponding to the established maximum allowable operating pressure for a segment of existing pipeline is not commensurate with the present class, the operator shall make a study to determine:

(1) The present class location for the segment involved;

(2) The design, construction, and testing procedures followed in the original construction, and a comparison of these procedures with those required for the

present class location by the applicable provisions of this part;

(3) The physical condition of the segment to the extent it can be ascertained from available records;

(4) The operating and maintenance history of the segment;

(5) The maximum actual operating pressure and the corresponding hoop stress, taking pressure gradient into account for the segment of pipeline involved;

(6) The actual area affected by the population density increase, and physical barriers or other factors which may limit further expansion of the more densely populated area.

(b) Change in class location—Confirmation or revision of maximum allowable operating pressure. If the hoop stress to the established maximum allowable operating pressure of a segment of pipeline is not commensurate with the present class location, and the segment is in satisfactory physical condition, the maximum allowable operating pressure of that segment of pipeline must be confirmed or revised according to the requirements set forth in section 49 CFR 192.611, which is hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0873 Operations—Surveillance and damage prevention.

(a) Continuing surveillance.

(1) Each operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location, failures, leakage, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions.

(2) If a segment of pipeline is determined to be in unsatisfactory condition no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with 24.0886.

(b) Damage prevention.

Each operator of a buried pipeline must carry out a written program for the prevention of damage to that pipeline from excavation activities. This program shall include, at a minimum:

(1) The identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located;

(2) Provides for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (c)(1) of this section of the following as often as needed to make them aware of the damage prevention program:

(A) The program's existence and purpose;

(B) How to learn the location of underground pipelines before excavation activities are begun.

(3) Provide a means of receiving and recording notification of planned excavation activities.

(4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify their markings;

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as possible, the activity begins;

(6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities.

(A) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and

(B) In the case of blasting, any inspection must include leakage surveys.

History: Rule 02-01, eff 30 Aug 01.

24.0874 Operations—Emergency plans and public education.

(a) Each operator shall establish written procedures to minimize the hazard resulting from a gas pipeline emergency. At a minimum, the procedures must substantially comply with those set forth in 49 CFR 192.615, which is hereby incorporated by reference.

(b) Each operator shall establish a continuing education program to enable customers, the public, appropriate government organizations, and persons engaged in excavation activities to recognize a gas pipeline emergency for the purpose of reporting it to public officials. The program and the media used must be as comprehensive as necessary to reach all persons at risk and must be conducted in both English and Samoan.

History: Rule 02-01, eff 30 Aug 01.

24.0875 Operations—Allowable operating pressures.

(a) Steel or plastic pipelines. No person shall operate a segment of a steel or plastic pipeline at a pressure that exceeds the limits set forth in the provisions of 49 CFR 192.619, which are hereby incorporated by reference.

(b) High-pressure distribution systems. No person may operate a segment of a high-pressure distribution system at a pressure that exceeds the limits established in section 49 CFR 192.621, which is hereby incorporated by reference.

(c) Low pressure distribution systems.

(1) No person may operate a low-pressure distribution system at a pressure high enough to make unsafe the operation of any connected and properly adjusted low-pressure gas burning equipment.

(2) No person may operate a low-pressure distribution system at a pressure lower than the minimum pressure at which the safe and continuing operation of any connected and properly adjusted low-pressure gas burning equipment can be assured.

History: Rule 02-01, eff 30 Aug 01.

24.0876 Odorization of gas.

(a) In order to safeguard the health of persons and the environment, the commission may require that a combustible gas in a distribution line contain a natural odorant, or be odorized, so that at a concentration in air of one-fifth of the lower explosive limit the gas is readily detectable by a person having a normal sense of smell.

(b) In the concentrations in which it is used, the odorant in combustible gases must comply with the following:

(1) The odorant may not be deleterious to persons, materials or pipe.

(2) The products of combustion from the odorant may not be toxic when breathed nor may they be corrosive or harmful to those materials to which the products of combustion bull be exposed.

(3) The odorant may not be soluble in water to an extent greater than 2.5 parts to 100 parts by weight.

(c) Equipment for odorization must introduce the odorant without wide variations in the level of odorant.

(d) Each operator shall conduct periodic sampling of combustible gases to assure the proper concentration of odorant in accordance with this section.

History: Rule 02-01, eff 30 Aug 01.

24.0877 Maintenance of pipelines.

No person may operate a segment of pipeline unless such segment is repaired and maintained in accordance with the provisions of 49 CFR 192.701 through 755, inclusive, which are hereby incorporated by reference in this chapter.

History: Rule 02-01, eff 30 Aug 01.

24.0880 Scope and applicability.

(a) This subpart applies to an operator of an onshore oil pipeline that, because of its location, could reasonably be expected to significantly or adversely affect the environment by discharging oil into or on the navigable waters of this territory and/or adjoining shorelines.

(b) Within 90 days from the effective date of these rules, an operator of a pipeline shall not handle,

store, or transport oil in that pipeline unless the operator has prepared and submitted to the commission a response plan meeting the requirements of this subpart.

History: Rule 02-01, eff 30 Aug 01.

24.0881 Response plans.

(a) Each response plan must plan for resources for responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge. For purposes of this subpart, a worst case discharge shall be the largest foreseeable discharge by volume in barrels which may be released along any segment of pipeline.

(b) Each response plan must be written in English and translated into Samoan.

(c) Each response plan must include:

(1) A core plan consisting of—

(A) An information summary;

(B) Immediate notification procedures;

(C) Spill detection and mitigation procedures;

(D) The name, address, and telephone number of the oil spill response organization(s);

(E) Response activities and response resources;

(F) Names and telephone numbers of federal and territorial agencies which the operator expects to have pollution control responsibilities and support;

(G) Training procedures;

(H) Equipment testing;

(I) Drill types, schedules and procedures; and

(J) Plan review and update procedures.

(d) Each response plan shall be written in a format which substantially complies with the provisions of 49 CFR 194, Appendix A, "Guidelines for the Preparation of Response Plans" which is hereby incorporated by reference.

(e) Each response plan shall be retained in the following locations;

(1) The operator's headquarters;

(2) At each pump station; and

(3) At any other locations where response activities may be conducted.

(f) Response resources. Each operator shall identify and ensure, by contract or other approved means, the resources necessary to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent a substantial threat of a worst case discharge.

(g) Training. Each operator shall conduct training for its employees and agents in accordance with the provisions of 49 CFR 194.117, which is hereby incorporated by reference in this chapter.

History: Rule 02-01, eff 30 Aug 01.

24.0885 Scope and Applicability.

(a) This subpart prescribes safety standards and accident reporting requirements for pipeline facilities used in the transportation of hazardous liquids. For purposes of this subpart, the term hazardous liquids shall include petroleum, petroleum products, or anhydrous ammonia, but shall not include liquid that is transported in a gaseous state.

(b) This subpart applies to onshore pipelines facilities and transportation of hazardous liquids associated with those facilities within the territorial limits of American Samoa.

History: Rule 02-01, eff 30 Aug 01.

24.0886 Pipeline transport safety requirements.

(a) Compatibility. No person may transport any hazardous liquid unless the hazardous liquid is chemically compatible with both the pipeline, including all components, and any other commodity that it may come into contact with while in the pipeline.

(b) Non-steel pipelines. No person may transport any hazardous liquid through a pipe that is constructed of materials other than steel unless the operator informs the executive secretary of its intention in writing 90 days prior to transporting such hazardous liquid. The notice

must include the chemical name, common name, properties, and characteristics of the hazardous liquid along with the material used in construction of the pipeline. If the executive secretary determines that such transport will be unduly hazardous, he will, within 90 days of the receipt of the notice, issue and order to the operator prohibiting the transport of the hazardous liquid in the proposed manner.

(c) Design requirements. New pipeline systems constructed with steel pipe and pipeline systems to be relocated, replaced or otherwise changed shall comply with the design requirements of 49 CFR Subpart C, which are hereby incorporated by reference in this chapter.

(d) Construction. New pipeline systems constructed with steel pipe and pipeline systems to be relocated, replaces, or otherwise changed shall comply with the construction requirements set forth in 49 CFR Subpart D, which are hereby incorporated by reference in this chapter.

(e) Hydrostatic testing. Each new pipeline system, each pipeline system in which pipe has been relocated or replaced, or that part of a pipeline system that has been relocated or replaced, must be hydrostatic tested in accordance with the provisions of 49 CFR Subpart E, which are hereby incorporated by reference in this chapter.

(f) Operation and maintenance. Operators of pipeline systems transporting hazardous liquids shall abide by the operation and maintenance requirements set forth in 49 CFR Subpart F, which are hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0887 Accident reporting.

(a) Any failure in a pipeline system resulting in the following events must be reported in accordance with subsection (b) or this section:

(1) Explosion or fire;

(2) Loss of 25 or more barrels of liquid;

(3) Escape to the atmosphere of more than five barrels a day of highly volatile liquids;

(4) Death of any person;

(5) Bodily harm to any person resulting in one or more of the following:

(A) Loss of consciousness;

(B) Necessity to carry the person from the scene for medical treatment;

(C) Disability which prevents the discharge of normal duties or the pursuit of normal activities beyond the date of the accident.

(6) Estimated property damage to the property of the operator or others, or both, exceeding $5,000.

(b) At the earliest practicable moment following discovery of a release of the hazardous liquid transported resulting in an event described in subsection (a), or where a release results in the pollution or discoloration of any surface water or an adjoining shoreline, the operator of the system shall give notice by telephone to the executive secretary, TEMCO, Emergency Medical Services and the Department of Public Safety, as appropriate. Furthermore, within 30 days of an accident set forth in subsection (a), the operator shall prepare and file an accident report with the appropriate agency of the American Samoa Government. The operator shall retain copies of all such reports.

(c) If the executive secretary, the federal Department of Transportation or any other territorial agency wishes to investigate an accident, the operator involved shall make available to the investigating agency all records and information that in any way pertain to the accident, and shall afford all reasonable assistance in the investigation.

History: Rule 02-01, eff 30 Aug 01.

[End Of Title 24 – Chapter 8]

TITLE 24 – CHAPTER 09 – FISHING

Sections

24.0901 Definitions.

(1) "Department" means the Department of Marine and Wildlife Resources (A.S.C.A. § 24.0302(1)).

(2) "Director" means the director of DMWR (A.S.C.A. § 24.0302(2)).

(3) "Fish" means those species of the classes osteorchthyes, condrichtyes and agnathes that shall not be fished for except as authorized by rule of the Director. The term "fish" includes all stages of development and the body parts of fish species (A.S.C.A. § 24.0302(3)).

(4) "Shellfish" means those species of marine and freshwater invertebrates that shall not be taken except as authorized by rule of the Director. The term shellfish includes all stages of development and the body parts of shellfish species (A.S.C.A. § 24.0302(5)).

(5) "Aquarium fish" means any fish or shellfish collected alive and intended for home display or for the commercial aquarium fish industry.

(6) "Commercial fishing" means any fishing activity in which part or all of the catch is sold or marketed or for which the fisherman receives income as a result of the fishing activity, such as payment for fishing charter, a salary for fishing, or cash for their portion of the catch.

(7) "Coral" means any living aquatic organism of the subphylum cnidaria that are capable of secreting hard skeletal parts or can incorporate stony secretions within or around their tissues e.g. ermatypic corals, black coral, precious corals, blue coral, organpipe corals, fire corals, lace corals, etc.

(8) "Deep-water bottom fish" means those species of fish that live on or near the bottom and are taken at depths greater than 200 feet.

(9) "Drift Gillnet" means any net that is deployed without being staked or otherwise attached to the shore or bottom so that it is able to drift unattached.

(10) "Fish aggregation device (FAD) " means any object moored in the offshore waters of American Samoa for the purpose of attracting fish.

(11) "Fish habitat" means any organic or inorganic material so configured as to create an environment that attracts, retains or is significantly used by populations of fish and/or shellfish.

(12) "Fish / Shellfish trap" means any portable or unbaited fish catching apparatus consisting of an enclosure with entrances designed to admit and retain the catch.

(13) "Fish weir" means any baited or unbaited fish or shellfish catching apparatus consisting of a pocket or trap that is placed in a fixed position.

(14) "Fishing" means to take or attempt to take fish or shellfish by any means. This includes, but is not limited to, the use of gear such as hook and line, spears, nets, traps, weirs, and prohibited gears such as dynamite and fish poisons.

(15) "Ornamental shells" means any shellfish collected primarily for the value of their shell.

(16) "Recreational mooring buoy:" Any buoy or mooring device deployed by the department or the United States Government for the purpose of preventing damage to coral or fish habitat by giving recreational vessels a safe option to anchoring.

(17) "Subsistence fishing" means any fishing activity where the catch is not sold or marketed but is shared within the family or village structure for the purpose of home consumption.

(18) "Take" means to harass, harm, pursue, hunt, shoot, wound, kill trap, capture, or collect, or attempt to engage in any such conduct.

(19) "Traditional fish trap" means any fish or shellfish trap constructed of natural materials in the style of traditional Samoan fish traps (Enu, Faga, Sele, etc.).

(20) "Traditional surround net" means a large leaf sweep apparatus constructed of natural materials in the style of the traditional Samoan lau.

(21) "Vessel" means any sort of water craft or float used to transport persons or gear.

(22) "Waters of American Samoa" means all fresh and brackish waters, reefs, and intertidal zones, as well as marine areas within the U.S. Territorial seas surrounding the islands of American Samoa.

(23) "Buy" means to purchase, barter, exchange or trade, and includes an offer to buy.

(24) "Sell" means to exchange or offer to exchange for a price or something of value and includes possession for sale, barter, exchange or trade.

(25) "SCUBA gear" means the use of a portable and self-contained underwater breathing device, consisting of compressed air tanks and breathing regulator, or any other device used to deliver compressed air to a diver, that allows a diver to successfully remain underwater longer than a person can hold his or her breath.

(26) "Live rock" means any coral or basalt rock with living marine organisms growing on it.

History: DMWR regs., eff 3 Aug 95.

24.0905 Dealers Records.

(a) In accordance with 24.0305 A.S.C.A., every seafood dealer shall make a legible record in the form of a receipt in triplicate on forms to be furnished by the department.

(b) The original signed copy of the receipt shall be delivered to the fisherman at the time of the purchase or receipt of the fish or shellfish. The duplicate copy shall be kept by the dealer or person receiving the fish or shellfish for a period of six months and shall be available for inspection at any time within that period by the department. The triplicate copy shall be delivered to the department on or before the sixteenth day of each month.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0906 Other Required Records – Fishermen, Fish Processors, and Fish Wholesalers.

(a) Commercial Fishermen shall be required to keep all applicable records in accordance with 24.0306 A.S.C.A.

(b) Fish processors shall be required to file written reports as required by 24.0307 A.S.C.A.

(c) Fish wholesalers shall report all information to the department as required by 24.0308 A.S.C.A.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0907 Confidentiality of Records.

In accordance with 24.0309 A.S.C.A., the receipts, reports, or other records filed with the department and the information contained therein, shall be confidential, and the records shall not be public records, and the information contained in the records shall be compiled or published as summaries, so as not to disclose the individual record or business of any person.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0908 Annual Proclamation.

(a) Each year, the Director of the Department shall issue a proclamation establishing the following for the taking of fish and shellfish:

(1) Seasons,

(2) Area and gear restrictions,

(3) License and permit fees, and

(4) Harvest limits.

(b) Annual proclamations shall be effective beginning on January 1st through December 31st of each year, or until superseded by further proclamation of the Director.

(c) Copies of the current proclamation will be made available at the Department office in Fagatogo.

(d) The failure of the Department to issue an annual proclamation does not invalidate any existing administrative rules.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0910 Engaging in prohibited activities in restricted fishing areas.

It is unlawful to engage in prohibited fishing activities in restricted areas as defined in the annual proclamation.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0911 Fagatele Bay National Marine Sanctuary.

In conjunction with existing federal regulations, the following activities are prohibited in Fagatele Bay National Marine Sanctuary subzones A and B, the boundaries of which incorporate all lands and waters of Fagatele Bay from the mean high water line seaward to a line extending from Fagatele Point to Steps Point.

(a) No person shall gather, take, break, cut, damage, destroy or possess any invertebrate, shellfish, coral, bottom formation, or marine plant. Including but not limited to the taking of spiny lobster, slipper lobster, and tridacnid clams.

(b) No person shall possess or use spearguns, including such devices known as Hawaiian slings, pole spears, arbalettes, pneumatic and spring loaded spearguns, bow and arrows, bang sticks, or any similar taking device.

(c) No person shall possess or use seines, trammel nets, or any fixed net.

(d) No vessel shall anchor in living coral or anchor in any manner that causes damage to living coral.

(e) No vessel shall discharge, or visitor cause to be discharged, in the marine environment any substance that may damage fish habitat. This includes but is not limited to garbage, human waste, and oily bilge.

(f) There shall be a rebuttable presumption that any items listed in this section found in the possession of a person within the Sanctuary have been used within the sanctuary.

(g) There shall be a rebuttable presumption that any fish or shellfish found in the possession of a person within the sanctuary was taken within the sanctuary.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0912 Fagatele Bay subzone A.

The following activites are prohibited in Fagatele Bay subzone A, the boundaries of which incorporate all lands and waters of Fagatele Bay from the mean high

water line seaward to a line extending from Fagatele Point to Matautuloa Benchmark.

(a) No person shall possess or use fishing poles, handlines, or trawls.

(b) Commercial fishing shall be prohibited.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0913 Rose Atoll National Wildlife Refuge (RANWR).

In conjunction with the existing federal regulations, the following activities are prohibited within RANWR, the boundaries of which incorporate all lands within the extreme low water line of the outside perimeter reef except at the entrance channel where the boundary is a line extended between the extreme low waterlines on each side of entrance channel.

(a) No person shall gather, take, break, cut, damage, destroy or possess any invertebrate, shellfish, coral, bottom formation, or marine plant. This includes but is not limited to the taking of spiny lobster, slipper lobster, and tridacnid clams.

(b) No person shall take or attempts to take fish.

(c) No person shall enter RANWR without a special use permit, obtainable at DMWR.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0920 Use of prohibited fishing gears.

It is unlawful to use or possess in a fishing area any gear prohibited by the annual proclamation.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0921 Taking of fish with explosive.

It is unlawful to take or attempt to take fish or shellfish with dynamite or any other explosive.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0922 Use of explosives.

It is unlawful to place or explode dynamite or any explosive, or cause to be placed or explode dynamite or any explosive in the waters of American Samoa for any reason except as may be authorized by the American Samoa Government pursuant to all applicable regulations and permits.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0923 Use of Poisonous substances.

It is unlawful to take or attempt to take fish or shellfish using any substance that has a poisonous or intoxicating effect on fish or shellfish. These prohibited substances include but are not limited to laundry bleach, quinaldine, insecticides, herbicides, and traditional fish poisons derived from plant and animal materials such as Barringtonia (futu) and Derris (Ava niu kini).

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0924 Use of electrical devices.

It is unlawful to take or attempt to take fish or shellfish with any electrical device that operates by shocking with an electrical current.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0925 Use of SCUBA gear.

Subject to the provisions of section 24.0916 and this section, fishing using SCUBA gear is lawful except that:

(a) It is unlawful to take, attempt to take, or assist in the taking of fish or shellfish (or both) using SCUBA gear by any means other than by hand or by spear.

(b) It is unlawful to take, attempt to take, or assist in the taking of fish or shellfish (or both) using SCUBA gear where the catch or harvest taken exceeds:

(1) Two fish or two shellfish of any legal size or weight, or one fish and one shellfish of any legal size or weight, per diver per day, or

(2) The maximum weight of five pounds legal size fish or shellfish in any combination per diver per day, if the quantity of catch or harvest taken is more than two.

(c) It shall be prima facie evidence of a violation of this section for any person when in or on the

waters of American Samoa, in any vehicle or vessel, or on the shoreline close to fishing locations, to have in possession SCUBA gear and a catch or harvest which exceeds the limits imposed under subsection (b). In all cases in which such possession or custody is proven, the burden of proof shifts to the person found to be in possession to show that the catch or harvest was taken without using SCUBA gear.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0926 Use of SCUBA gear at night.

It is unlawful to take, attempt to take, or assist in the taking of fish or shellfish (or both) in any quantity using SCUBA gear after sunset and before sunrise.

(a) Possession or custody of fish or shellfish (or both) and SCUBA gear by any person when in or on the waters of American Samoa, in vehicle or vessel, or on the shoreline close to fishing locations, during the period commencing one hour after sunset and terminating one hour after sunrise, shall be prima facie evidence that the catch or harvest was taken in violation of this section.

(b) In all cases where such possession or custody is proven, the burden of proof shifts to the person found to be in possession to show that the catch or harvest was taken after sunrise and before sunset.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0927 Possession of explosives, poisonous substances, or electrical devices.

It is unlawful for any person when in or on the waters of American Samoa, or on the land close to fishing locations, to possess any explosive, poisonous substances, or electrical devices designed to shock fish. Unless the person proves, by the preponderance of evidence, that he intended to use the item for a purpose other than illegal fishing.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0928 Hand nets.

The frame opening for hand or scoop nets shall not exceed three feet in diameter.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0929 Cast or throw nets.

It is unlawful to possess, use or attempt to take fish or shellfish with a cast or throw net with a stretched mesh size less than three quarters of an inch.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0930 Gillnets.

It is unlawful to:

(a) Possess, use or attempt to take fish with a gillnet with a stretched mesh size of less than one and one half inches.

(b) Deploy a gillnet or series of continuous gillnets with a combined length in excess of 700 feet.

(c) Deploy a gillnet within fifty feet of another gillnet or weir.

(d) Abandon or discard a gillnet within the waters of American Samoa.

(e) Deploy a gillnet in any location contrary to existing U.S. Coast Guard or Territorial regulations, or cause a hazard to navigation.

(f) Deploy a drift gillnet in the waters of American Samoa.

(g) Deploy a gillnet in water greater than sixty (60) feet deep.

(h) Gillnets must be checked at least every three hours and cleared of fish and debris.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0931 Seines, surround nets and drag nets.

Seines, surround nets and drag nets must have a stretched mesh size of at least one and one half (1.5) inches. This restriction shall not apply to the construction or use of traditional surround nets (lau) made from materials.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0932 Fish Weirs.

Any person placing or maintaining a fish weir in the waters of American Samoa must first obtain an official permit from the department. The permittee must comply with all requirements of the permit.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0933 Fish Traps.

(a) Fish and shellfish traps shall not exceed six (6.0) feet in any linear dimension i.e. length, width, height or diameter.

(b) All fish and shellfish traps must be checked and emptied at least every twenty four (24) hours.

(c) It is unlawful to deploy a fish or shellfish trap in any location where the trap, line or marker floats may pose a hazard to navigation.

(d) It is unlawful to abandon or discard a fish or shellfish trap in the waters of American Samoa.

(e) A permit is required from the department for the use of any fish or shellfish trap(s) used commercially.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0934 Import and sale of illegal fishing gear.

It is unlawful to import, possess, sell or offer for sale any fishing gear that is prohibited from use by these laws.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0935 Illegally taken fish and shellfish.

It is unlawful to possess, receive, transport, buy, sell, or offer for sale any fish or shellfish that was taken in a manner contrary to these laws.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0936 Destruction of coral.

It is unlawful to willfully damage coral during fishing operations.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0937 Destruction of fish habitat.

It is unlawful to willfully damage or destroy fish habitat at any time unless authorized by the American Samoa Government pursuant to all applicable permits and regulations.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0950 Unlawful taking of fish or shellfish.

It is unlawful to take any fish or shellfish in any manner, location, quantity, size or season contrary to the annual proclamation.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0951 Coral.

(a) It is unlawful to collect any living coral in water less than 60 feet deep.

(b) No commercial harvest of coral is permitted without a valid coral collection permit from the department. The permittee must comply with all requirements and conditions of the permit.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0952 Live rock.

(a) It shall be unlawful for any person to knowingly collect, excavate, remove or relocate any quantity of live rock by any means from the waters of American Samoa without a valid permit from the department. Permits may be issued for scientific study or for the mariculture operations in accordance with 24.0939.

(b) It shall be unlawful to sell, offer for sale, or possess for sale or export any quantity of live rock harvested from the waters of American Samoa, except pursuant to a valid mariculture permit under24.0939.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0953 Giant Clams (Tridacnidae).

(a) It is unlawful to take, possess, sell or import any tridacnid clam from the waters of American Samoa that measure less than seven (7.0) inches when measured across the longest part of the shell.

(b) Tridacnid clams imported, sold or offered for sale must be in whole condition with meat still attached to the shell to facilitate the measuring of these clams.

(c) Tridacnid clams taken for personal consumption must remain whole condition until they reach the fisherman's home or the place of consumption so that they may be measured.

(d) These restrictions shall not apply to clams raised in captivity providing the following:

(1) The clam farmer possess a valid aquaculture permit from the department; and

(2) The possess can demonstrate that the clam was raised in captivity.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0954 Ornamental Shells.

The commercial harvest of ornamental shells from the waters of American Samoa requires a valid shell collection permit from the department. The permittee must comply with all requirements and conditions of the permit.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0955 Mangrove Crabs (Scylla serrata).

(a) It is unlawful to take, possess, sell, offer for sale, import or export eggbearing mangrove crabs.

(b) It is unlawful to take, possess, sell, offer for sale, import or export any mangrove crab that measures less than six (6.0) inches across the widest portion of the back.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0956 Coconut Crabs (Birgus latro).

(a) It is unlawful to take, possess, sell, offer for sale, import or export any eggbearing coconut crab.

(b) It is unlawful to interfere with a coconut crab engaged in the activity of releasing larvae into the waters of American Samoa.

(c) It is unlawful to take, possess, sell, offer for sale, import or export any coconut crab that measures less than three (3.0) inches across the widest portion of the back.

(d) These regulations will apply to coconut crabs found throughout the Territory including land areas.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0957 Slipper Lobster (Parribacus sp.).

(a) It is unlawful to take, possess, import, export, sell or offer for sale eggbearing slipper lobsters.

(b) It is unlawful to use spears or snagging devices for the collection of slipper lobsters.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0958 Spiny Lobster (Parribacus sp.).

(a) It is unlawful to take, possess, sell or offer for sale eggbearing spiny lobsters.

(b) It is unlawful to take, possess, sell or offer for sale spiny lobsters that measure less than three and one eighth inches in carapace length, defined as the midline measurement taken from the leading edge of the carapace between the horns to the rear edge of the carapace.

(c) Lobsters taken, imported, sold or offered for sale must be whole to facilitate the measuring of these lobsters.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0959 Sea Turtles.

The following activities relating to the green sea turtle (Chelonia mydas), the hawksbill turtle (Eretmochelys imbricata), and the leatherback turtle (Dermochelys coriacea) are prohibited:

(1) Import, export, sell or offer for sale any such species or body parts of such species,

(2) Take any such species in American Samoa, and

(3) Possess, deliver, carry, transport or ship by any means whatsoever any such species or the body parts of any such species.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0960 Marine Mammals.

It is unlawful to:

(1) Take a marine mammal in American Samoa,

(2) Import, export, sell or offer for sale any marine mammal or the body parts of any marine mammal, and

(3) Possess, deliver, carry, transport or ship by any means whatsoever any marine mammal or the body parts of any marine mammal.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0961 Sharks.

(a) No person shall:

(1) Possess, deliver, carry, transport or ship by any means whatsoever any shark species or the body parts of any such species;

(2) Import, export, sell or offer for sale any such species or body parts of such species; or

(3) Take or kill any such species in American Samoa.

(b) If any shark is caught or captured, it shall be immediately released, whether dead or alive. If the shark is captured alive, it shall be released in a manner that affords it the greatest opportunity for survival.

(c) It is not a defense that the shark was caught or captured inadvertently, as bycatch, or from another fishery.

(d) For purposes of this section, there shall be a rebuttable presumption that any shark, or part of a shark, found in possession was possessed or transferred in violation of this section.

(e) Notwithstanding subsection (a), any person who holds a permit issued by the Department of Marine and Wildlife Resources to conduct scientific research shall not be subject to the penalties of this section.

History: DMWR regs., Rule 02-12, eff 1 Nov 12.

24.0962 Humphead Wrasse (Cheilinus undulatus).

(a) This section applies to the Humphead Wrasse (Cheilinus undulatus), also known as Napoleon Wrasse, Maori Wrasse, Lalafi, Tagafa, or Malakea.

(b) No person shall:

(1) Possess, deliver, carry, transport or ship by any means whatsoever Humphead Wrasse or the body parts of any such species;

(2) Import, export, sell or offer for sale any such species or body parts of such species; or

(3) Take or kill any such species in American Samoa.

(c) If any Humphead Wrasse is caught or captured, it shall be immediately released, whether dead or alive. If the Humphead Wrasse is captured alive, it shall be released in a manner that affords it the greatest opportunity for survival.

(d) It is not a defense that the Humphead Wrasse was caught or captured inadvertently, as bycatch, or from another fishery.

(e) For purposes of this section, there shall be a rebuttable presumption that any Humphead Wrasse, or part of a Humphead Wrasse, found in possession was possessed or transferred in violation of this section.

(f) Notwithstanding subsection (a), any person who holds a permit issued by the Department of Marine and Wildlife Resources to conduct scientific research shall not be subject to the penalties of this section.

History: DMWR regs., Rule 02-12, eff 1 Nov 12.

24.0963 Bumphead parrotfish (Bolbometopon muricatum).

(a) This section applies to the Bumphead parrotfish (Bolbometopon muricatum), also known as Green Humphead parrotfish, Uluto'i, Laea-uluto'i, or Galo uluto'i.

(b) No person shall:

(1) Possess, deliver, carry, transport or ship by any means whatsoever Bumphead

parrotfish or the body parts of any such species;

(2) Import, export, sell or offer for sale any such species or body parts of such species; or

(3) Take or kill any such species in American Samoa.

(c) If any Bumphead parrotfish is caught or captured, it shall be immediately released, whether dead or alive. If the Bumphead parrotfish is captured alive, it shall be released in a manner that affords it the greatest opportunity for survival.

(d) It is not a defense that the Bumphead parrotfish was caught or captured inadvertently, as bycatch, or from another fishery.

(e) For purposes of this section, there shall be a rebuttable presumption that any Bumphead parrotfish, or part of a Bumphead parrotfish, found in possession was possessed or transferred in violation of this section.

(f) Notwithstanding subsection (a), any person who holds a permit issued by the Department of Marine and Wildlife Resources to conduct scientific research shall not be subject to the penalties of this section.

History: DMWR regs., Rule 02-12, eff 1 Nov 12.

24.0964 Giant grouper (Epinephelus lanceolatus).

(a) This section applies to the Giant grouper (Epinephelus lanceolatus), also known as Ata'ata-uli or Vaolo.

(b) No person shall:

(1) Possess, deliver, carry, transport or ship by any means whatsoever Giant grouper or the body parts of any such species;

(2) Import, export, sell or offer for sale any such species or body parts of such species; or

(3) Take or kill any such species in American Samoa.

(c) If any Giant grouper is caught or captured, it shall be immediately released, whether dead or alive. If the Giant grouper is captured alive, it shall be released in a manner that affords it the greatest opportunity for survival.

(d) It is not a defense that the Giant grouper was caught or captured inadvertently, as bycatch, or from another fishery.

(e) For purposes of this section, there shall be a rebuttable presumption that any Giant grouper, or part of a Giant grouper, found in possession was possessed or transferred in violation of this section.

(f) Notwithstanding subsection (a), any person who holds a permit issued by the Department of Marine and Wildlife Resources to conduct scientific research shall not be subject to the penalties of this section.

History: DMWR regs., Rule 02-12, eff 1 Nov 12.

24.0980 Permits.

(a) The following permits are required when applicable:

(1) Aquarium fish collection permit.

(2) Fish weir permit.

(3) Commercial trapping permit.

(4) Commercial coral harvesting permit.

(5) Commercial shell harvesting permit.

(6) Scientific collection permit.

(7) Importation permit for living aquatic organisms.

(8) Mariculture permit for culture of living aquatic organisms.

(9) Importation permit for fresh fish and shellfish products.

(b) Requests for permits shall be submitted to the director on forms provided by the department.

(c) The director may disapprove the application, or condition any required permit, if in his opinion the issuance of the permit would be contrary to 24.0304 A.S.C.A. which mandates the department to manage, protect, preserve and perpetuate the marine and wildlife resources in the Territory. Failure to abide by any required

condition in a permit shall result in a violation of these rules.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0981 Licenses.

(a) A commercial fishing license is required for all fishermen engaged in commercial fishing in the waters of American Samoa. Persons who wish to apply for a commercial fishing license must:

(1) Continuously reside in American Samoa for at least one year,

(2) Show proof of legal residency or citizenship, and

(3) Show proof of previous fishing experience.

(b) License applications shall be submitted to the director on forms supplied by the department.

(c) A recreational fishing license may be required for fishermen engaging in subsistence or recreational fishing activities. Requirements for the license shall be detailed in the annual proclamation.

(d) A license shall be issued or renewed upon approval of the application form and payment of the required Act.

(e) The director or his designees may suspend or revoke any license for violation of any regulation under this chapter pursuant to the Administrative Procedures Act.

(f) The director may disapprove the application of any required license if in his opinion the issuance of the license would be contrary to 24.0304(1) A.S.C.A. which mandates the department to manage, protect, preserve and perpetuate the marine and wildlife resources in the Territory.

(g) Fees for licenses shall be set in the annual proclamation.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0982 Scientific Collection Permit.

Any person with a bona fide scientific or educational purpose may apply in writing to the director for a scientific collection permit that may allow the applicant to collect aquatic organisms using gear, in certain areas, or at certain times, otherwise prohibited by these regulations.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0983 Imported Fish Products.

All persons importing fresh fish and shellfish products of the same species found in American Samoan waters must first obtain a permit from the Department and shall comply with all applicable laws in this document. Failure to demonstrate compliance with these laws shall result in denial of the applicable permit(s) and forfeiture of the unlawful product in accordance with 24.0948.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0984 Importation of Living Aquatic Organisms.

(a) Any person wishing to import living aquatic organisms to the Territory must first obtain a permit from the department after consultation and approval by the director.

(b) Requests for permits shall be submitted to the director on forms provided by the department.

(c) The director may disapprove the application, or condition any require permit, if in his opinion the issuance of the permit would be contrary to 24.0304 A.S.C.A. which mandates the department to manage, protect, preserve and perpetuate the marine and wildlife resources in the Territory.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0985 Fish Aggregation Devices (FADs).

(a) Any person wishing to deploy a FAD in the waters of American Samoa must first obtain a permit to do so from the U.S. Coast Guard. Preliminary planning shall be carried out in cooperation with the department and the U.S. Coast Guard.

(b) It is unlawful to moor any vessel, line, float, net, etc. to any department FAD, unless approved by the director.

(c) It is unlawful to obstruct or intentionally hinder another vessel from fishing in the area of the department FAD.

(d) It is unlawful to tamper with any portion of the department FAD.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0986 Recreational Mooring Buoys.

(a) It is unlawful to fish or conduct fish or shellfish harvesting activities while moored to a recreational mooring buoy.

(b) It is unlawful to tamper with, vandalize or remove any recreational mooring buoy.

(c) Recreation mooring buoys shall be clearly marked, "No Fishing."

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0987 Public Access Boat Ramps.

(a) It is unlawful to intentionally hinder any vehicle or vessel from using a department constructed boat ramp.

(b) It is unlawful to leave any vehicle, vessel or trailer on a department constructed boat ramp for any period exceeding one hour.

(c) It is unlawful to tie any vessel to a department constructed boat ramp or moor any vessel in a manner that prevents access to the boat ramp.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0990 Enforcement.

(a) These laws are fully enforceable by ASG Department of Public Safety Officers and other authorized persons, although the primary enforcement agents will be deputized DMWR staff.

(b) Pursuant to 24.0310(a) A.S.C.A., the director and designated staff shall have full authority to issue citations, collect fines, impound vessels, vehicles and equipment, and make arrests for violations of these laws.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0991 Penalties.

(a) Pursuant to 24.0312(a) A.S.C.A., any person who violates any provision of these laws shall be guilty of a class B misdemeanor punishable by a fine not to exceed five hundred dollars or by a prison term in excess of fifteen days not to exceed six months, or both.

(b) Pursuant to 24.0312(b) A.S.C.A., any business entity found in violation of these laws shall be fined not less than one-thousand dollars per violation.

(c) Pursuant to 24.0312(b) A.S.C.A., any property taken or possessed in violation of these laws may be subject to forfeiture to the government pursuant to a civil proceeding in the High Court of American Samoa.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

[End Of Title 24 – Chapter 9]

TITLE 24 – CHAPTER 10 – COMMUNITY-BASED FISHERIES MANAGEMENT PROGRAM

Sections

24.1001 Authority.

Pursuant to the authority granted to the Department of Marine and Wildlife Resources under A.S.C.A. § 24.0905, the following rules and regulations are set forth to govern and provide authority for the Community-based Fisheries Management Program.

History: Rule 1-08, eff 2008.

24.1002 Purpose.

The American Samoa Islands and its surrounding waters contain historical, cultural, and natural resources that must be protected, managed, controlled and preserved for the benefit of all people of the Territory and future generations. The protection of these traditionally valuable resources will enhance and increase fish abundance and size for future catch.

(a) To promote the protection and preservation of the American Samoa's Marine environment;

(b) To promote the management, conservation and sustainable development of American Samoa's Coral Reefs and their supporting ecosystems;

(c) To enhance sustainable fisheries in American Samoa;

(d) To empower, allow and assist local Villages in all aspects of the Village Marine Protected Area management including, but not limited to designation, protection, monitoring and enforcement of the Village Marine Protected Areas; and

(e) The institution of management programs to ensure that the Territory and its surrounding waters are safe habitats for Fish, shellfish and other marine life to exist and propagate for the continued use and enjoyment for the people of American Samoa, its future generations and visitors.

History: Rule 1-08, eff 2008.

24.1003 Definitions.

The following definitions shall apply to the regulations of the Community-based Fisheries Management Program. Any definition referring to the male gender also includes the female gender.

(1) "Barter" means the exchange or trade of Fish or Shellfish, or any Fish or Shellfish parts:

  (a) Taken for any use;

  (b) For other Fish, Shellfish or game or their parts; or

  (c) For other food or for non-edible items other than money if the exchange or trade is of a noncommercial nature.

(2) "Bleaching Agent" means any chemical-based product, solution, or liquid that may damage marine resources.

(3) "Closed Area(s) " means an area designated by the Village Monitoring and Enforcement Committee, and the Department, where it is illegal or prohibited to take Fish or Shellfish or any marine organism;

(4) "Closed Season" means the time during which Fish or Shellfish and any marine organism may not be Taken;

(5) "Commercial Fishing" means any Fishing activity in which part or all of the catch is sold or marketed or for which the fisherman receives income as a result of the Fishing activity, such as payment for Fishing charter, a salary for Fishing, or cash for their portion of the catch and includes the Taking, Fishing for, or possession of Fish, Shellfish, or other Fishery resources with the intent of disposing of them for profit, or by sale, Barter, trade or in commercial channels.

(6) "Coral" means the hard and soft corals. Hard corals are corals with hard or stony skeleton of marine creatures formed by polyps that live and grow in the Waters of American Samoa and also includes any Live Rock composed of dead coral skeleton or any living aquatic organism of the phylum Cnidaria that are capable of secreting hard skeletal parts or can incorporate stony secretions within or around their tissues e.g. hermatypiccorals, black coral, precious corals, blue coral, organ pipe corals, fire corals, lace corals or other similar corals. Soft corals are members of phylum Cnidaria, Class Anthozoa, order Octocorallia that have soft fleshy tissues, attach to the sea bottom and may have a flexible skeleton. They include Alcyonaca soft corals and gorgonians.

(7) "Cultural uses" means the Taking of Fish or Shellfish needed or used by a person where the Fish or Shellfish is normally or regularly used in cultural activities, ceremonies or traditions.

(8) "Cyanide" means compounds that include cyanide salts, such as sodium cyanide or potassium cyanide which can be solids or in solutions, and the gas hydrogen cyanide (HCN), also known as hydrocyanic acid gases, also known as hydrocyanic acid gas.

(9) "Cyanide Fishing" means a Fishing method using Cyanide compounds to Take Fish or Shellfish.

(10) "Day" means a twenty-four (24) hour period beginning at one minute after midnight (12:01 a.m.) and ending at midnight, 24hours later.

(11) "Department" means the Department of Marine and Wildlife Resources (DMWR).

(12) "Director" means the director of DMWR.

(13) "Domicile" means the true and permanent home of a Person from which that Person has no present intention or plan of moving away from and to which that Person intends or plans to return to whenever that Person is away; domicile may be proved by presenting evidence acceptable to the Department or the Village Monitoring and Enforcement Committee.

(14) "Fish" means any aquatic species of mammal, finfish, invertebrate, seaweeds, limu, or amphibian, in any state of its life cycle, found in or introduced into the Waters of American Samoa, and includes any part of such aquatic finfish, invertebrate, or amphibian, and includes but is not limited to octopi, urchins, sea cucumbers, snails, sea slugs, lobsters, crabs, shrimp, clams, sharks, rays, anemones, and those fish species of the classes Osteoichthyes, Chondrichtyes, and Macroalgaes occurring in the Waters of American Samoa. The term "Fish" includes all stages of development and the bodily parts of fish species.

(15) "Fishery" means a specific area of water or Reef in which a specific Marine Resource is Taken with a specific type of Fishing Gear; additionally, the Department may designate a Fishery to include more than one specific type of Fishing Gear or Marine Resource;

(16) "Habitat" means any natural or man-made material so configured as to create an environment that attracts, retains or is significantly used by populations of Fish, Shellfish and/or any living organism.

(17) "Fishing" means to Take or attempt to Take Fish or Shellfish or any marine organism by any means including, but not limited to, the following:

(a) The use of Fishing Gear such as hook and line, spears, nets, traps, weirs, and any other device or method used to Take or attempt to Take Fish or Shellfish or any marine and aquatic organism;

(b) Searching for catching, Taking or harvesting Fish or Shellfish or any marine and aquatic organism;

(c) The attempted searching for, catching, Taking, or harvesting of Fish or Shellfish or any marine and aquatic organism;

(d) Engaging in any other activity which can reasonably be expected to result in locating, catching, Taking or harvesting of Fish or Shellfish or any marine and aquatic organism;

(e) Placing and/or deploying, searching and recovery of any associated equipment such as radio beacons, buoy markers, Fish Aggregation Devices (FAD) except Department FAD's; or

(f) Any operation in the Waters of American Samoa in support of, or in preparation of any activity described in this definition.

(18) "Fishing Gear" means any equipment, implement or other thing or item that can be used in the act of Fishing or Taking of Fish, including any fishing net, fishing line, float trap, hook, winch, spear, or any other device used to Take or attempt to Take Fish or Shellfish or any marine and aquatic organism.

(19) "Fish Trap" means any portable or removable baited or unbaited Fish catching apparatus consisting of an enclosure with entrances designed to admit and retain Fish or Shellfish.

(20) "Fish Weir" means any baited or unbaited Fish or Shellfish or any marine or aquatic organism catching apparatus consisting of a pocket, trap, and/or fixed barrier that is placed in a fixed position. This term includes any material or item used in the construction of the apparatus including any net, pole, rope, wire, mesh, branch, leaves, or other similar materials. For the purposes of these regulations, there are two types of Fish Weirs:

(a) "Main Weir" means the central collection pocket or trap of a Fish Weir including its leader (main entrance) and any wings (side entrances);

(b) "Auxiliary Weir" means any secondary pocket or trap and its leader and wings that are attached to a Main Weir.

(21) "Gleaning" means the Taking of Fish or Shellfish or any marine and aquatic organism using the hand and/or with a handheld knife or other handheld instrument.

(22) "Live Rock" means any Coral, basalt rock, or other natural structure with any living organisms growing in or on the Coral, basalt rock, or structure.

(23) "Legal Entity" or "Legally Recognized Entity" means any corporation, partnership, joint venture, affiliation, association, or any other entity recognized by the laws of American Samoa.

(24) "Length of Fish" means the length from the tip of the snout of the Fish to the tip of the tail of the Fish (total length).

(25) "Limit" means the maximum legal Take per Person per day in the area in which the Person is Fishing even though part or all of the Fish are immediately preserved; a Fish when landed and killed becomes a part of the Limit of the Person originally hooking or catching it and cannot be transferred or given to another Person for the purposes of determining a Person's Limit.

(26) "Village Marine Protected Area" (VMPA) means any shore, shoreline, Reef or other designated marine area, that is established to serve the purpose(s) of these regulations.

(27) "Marine Resource" means any Fish, Shellfish, marine animal, Coral, Live Rock or other living creature or marine life found in or on the salt Waters of American Samoa or found in or on a Reef.

(28) "Mean High Water Mark" means the average level of the ocean's high tide for a particular area of shoreline or Reef.

(29) "Mean Low Water Mark" means the average level of the ocean's low tide for a particular area of shoreline or Reef.

(30) "Night Fishing" means the Fishing or Taking of Fish or Shellfish in the time period between one (1) hour after sunset until one (1) hour before sunrise.

(31) "Open Season" means the time during which Fish or Shellfish may lawfully be Taken; each period of time prescribed as an open season shall be interpreted to begin at 12:01 a.m. on the first day of the stated Time Period and end at midnight of the last day of the stated Time Period unless otherwise stated in a designation of an Open Season.

(32) "Participating Village" means a village that has agreed to participate in the Community-based Fisheries Management Program under Section 24.1004.

(33) "Person" means an individual, corporation, company, association, partnership or any other Legally Recognized Entity.

(34) "Persons" means more than one Person.

(35) "Reef" means the area from the shore line at Mean High Water Mark to a point one hundred (100) yards past the point where breakers form during the lowest low tide (i.e., during spring tide) which shall contain the entire area, length, growth, and structure of any Coral including all Live Rock(s), and atolls located on or in the Reef.

(36) "Resident" means:

(a) A person who for the 12 consecutive months immediately preceding the time when the claim of residence is made has maintained the Person's Domicile in American Samoa and who is neither claiming residency in another state, territory, or country, nor obtaining benefits under a claim of residency in another state, territory, or country;

(b) A native Samoan who resides in a village;

(c) A Legal Entity that has its main office or headquarters in American Samoa; a natural person who does not otherwise qualify as a resident under this paragraph may not qualify as a resident by virtue of an interest in a partnership, association, joint stock company, trust, or corporation;

(d) A member of the military service, or United States Coast Guard, who has been stationed in American Samoa for the 12 consecutive months immediately preceding the time when the claim of residence is made;

(e) A person who is the dependent of a resident member of the military service, or the United States Coast Guard, and who has lived in American Samoa for the 12 consecutive months immediately preceding the time when the claim of residence is made; or

(f) An alien who for the 12 consecutive months immediately preceding the time when the claim of residence is made has maintained the person's Domicile in American Samoa and who is neither claiming residency in another state, territory, or country, nor obtaining benefits under a claim of residency in another state, territory, or country.

(37) "Sandmining" means the act of or actual removal of sand from the coastline or in the village marine protected area by a Person by any means or method and for any commercial use or personal use, including but not limited to removal by shovel, vehicle, ricebags, barrels, bare hands, buckets, or any mechanism or manner in which sand is removed from a Village Marine Protected Area.

(38) "Season" means a stated period of time that occurs in yearly cycles.

(39) "Shellfish" means any aquatic animal with a shell and also includes all species of marine and freshwater invertebrates occurring in the Waters of American Samoa. The term "Shellfish" includes all stages of development and the bodily parts of Shellfish species.

(40) "Shellfish Trap" means any removable or portable, baited or unbaited Shellfish catching

apparatus consisting of an enclosure with entrances designed to admit and retain Shellfish.

(41) "Subsistence Fishing" means any legal Fishing activity where the catch is not sold or marketed but is shared within the family or Village for the purpose of home consumption and includes Cultural Uses.

(42) "Subsistence Uses" means the noncommercial, customary and traditional uses of wild, renewable Marine Resources by a Resident, whose Domicile is American Samoa, such use being for the direct personal or family consumption as food or for the customary trade, Barter, or sharing for personal or family consumption; in this paragraph, "family" means persons related by blood, marriage, adoption, Samoan custom or culture, or a person living in the Resident's household on a permanent basis.

(43) "Take"; "Taking"; "Takes" means to harass, harm, pursue, hung, shoot, wound, kill, capture, trap or collect, or attempt to engage in any such conduct.

(44) "Taken" means the removal, captured, killed or transferred of Fish/Shellfish or any other marine and aquatic organism.

(45) "Time Period" means any stated measurement or amount of time, including but not limited to, hours, days, weeks, or months.

(46) "Toxicant" means any material or chemical put, placed or introduction into the salt Waters of American Samoa by direct or indirect means that will kill, stun, or intoxicate Fish or Shellfish, or drive Fish or Shellfish from their normal or natural location.

(47) "Underwater Breathing Device" means any mechanical, fabricated, or man-made device or apparatus, including SCUBA equipment, Hookah equipment, used by a Person to allow that Person to breathe while submerged or while partly submerged. An Underwater Breathing Device does not include a snorkel that is less than twenty (20) inches in length.

(48) "Village" means a common association or grouping of houses, families, or people based upon traditional, recognized boundaries

(49) "Village Monitoring and Enforcement Committee" means the individual or group of individuals from a Village who have been selected, designated and trained to monitor their Village's Marine Protected Area through Village by-laws.

(50) "Village Policeman" means any elected or chosen policeman of a Village.

(51) "Village Pulenu'u" means the elected or chosen mayor of a Village.

(52) "Wastewater" means water or liquid that is discarded, discharged or released by a Person from any residence, vessel, guesthouse, house, or business, including but not limited to, sewage or the discharge from a washing machine.

History: Rule 1-08, eff 2008.

24.1004 Village Participation in the Community-based Fisheries Management Program.

To participate in the Community-based Fisheries Management Program a Village must do the following:

(a) Notify the Department of the Village's intent to participate;

(b) Meet with the proper representatives from the Department;

(c) Develop and implement Village by-laws for the conservation and management of the Village Marine Protected Area using the management options provided by this Community-based Fisheries Management Program or other management options recommended by the Department;

(d) Develop a Village Fisheries Management Plan

(e) Designate a Village Marine Protected Area that is properly within the boundaries of the Village;

(f) Select members for a Village Monitoring and Enforcement Committee;

(g) Mark the Village Marine Protected Area;

(h) Sign a cooperative agreement with DMWR to work together on the program;

(i) Receive training from the Department for the individuals of the Village Monitoring and

Enforcement Committee who will monitor the Village's Marine Protected Area;

(j) Provide Notice of the designation of the Village Marine Protected Area and Village by-laws to the public of American Samoa as required by the Administrative Procedures Act and these regulations; and

(k) Notify the Department of the Village's intent to open, re-open, close or re-close any Village Marine Protected Area.

History: Rule 1-08, eff 2008.

24.1005 Designation and Marking of a Village Marine Protected Area.

(a) A participating Village must designate the Village Marine Protected Area that will be governed by the management methods of these regulations.

(b) A participating Village must provide the Department with a description of the area designated as the Village Marine Protected Area.

(c) A designated Village Marine Protected Area's boundaries must be marked in a manner reasonably obvious to inform the public that access to the area has been restricted. Marking can be accomplished by any obvious means, including, but not limited to:

(i) Signs;

(ii) Posted Notices;

(iii) Published Notices;

(iv) Anchored or secured Floats that indicate the area is a Village Marine Protected Area.

(d) Limitations on Designating a Village Marine Protected Area:

(i) A Village may not designate as its Village Marine Protected Area a section, portion, or part of a Reef or reef flat that belongs to or has been traditionally controlled by another Village.

(ii) A Village may only designate as its Village Marine Protected Area a section, portion, part or all of a Reef that extends no more than one hundred (100) yards seaward beyond the end of the Reef at the Mean Low Water Mark.

(e) In areas where there is an overlap of authority or control over a Reef, or where the Village boundaries of a Reef are disputed, such dispute being supported by law or fact, the Village Monitoring and Enforcement Committees for each Village may do any of the following:

(i) Agree on the Management of the disputed area and work together to manage the portion of disputed Reef;

(ii) Establish an agreed upon boundary only for the purposes of marine conservation and management. Any such agreed upon boundary would not be an admission of the actual boundary but would only exist for the purposes of the Community-based Fishery Management Program;

(iii) Allow the Department to manage the disputed area; or

(iv) If no agreement can be reached between the disputing Villages, then there shall be no authority under these regulations for any to manage the disputed area.

History: Rule 1-08, eff 2008.

24.1006 Village By-laws.

(a) Each participating Village shall, after consultation with the Department, implement the set of Village by-laws that set forth the conservation and management measures that will control the Village's Marine Protected Area.

(b) The set of Village by-laws shall be adopted as required in A.S.C.A. § 4.1004.

(c) The Department shall keep on file, and make available to the public upon proper written request, a copy of the Village's bylaws. Any Person may request a copy of any Village by-laws.

(d) Each participating Village's Pulenu'u shall retain a copy of the Village by-laws.

History: Rule 1-08, eff 2008.

24.1007 Removal or Tampering with markers of a Village Marine Protected Area.

(a) It is a violation of these regulations for any unauthorized Person to remove, move, change, modify, destroy, hide, or submerge, or attempt to, or to cause such actions to any Village Marine Protected Area marker.

(b) It shall be a violation of these regulations for any Person who is authorized by one Village to set out the markers of Village's Marine Protected Area to remove, move, change, modify, destroy, hide, or submerge, or attempt to, or cause such actions to any marker of any other Village's Marine Protected Area unless so authorized by that Village's Monitoring and Enforcement Committee.

History: Rule 1-08, eff 2008.

24.1008 Fishing or Taking Fish in a Village Marine Protected Area.

(a) The following methods of Fishing or Taking Fish or Shellfish shall be the only Approved Fishing Methods for Fishing or Taking Fish or Shellfish in any Village Marine Protected Area.

(i.) Fishing with a rod and reel;

(ii.) Fishing with a bamboo pole;

(iii.) Fishing with a hand line;

(iv.) Fishing by Gleaning;

(v.) Fishing with a hand thrown pole spear;

(vi.) Fishing with a throw net;

(vii.) Fishing with a Fish or Shellfish Trap;

(viii.) Traditional Samoan fishing methods such as the use of Lau and the enu and spear;

(ix.) Fishing using spear gun(s)

(b) Any other method of Fishing or Taking Fish, other than the methods listed in subsection (a) of this section, shall be an illegal Fishing method and shall violate the provisions of the Community-based Fisheries Management Program.

(c) Any Village may further restrict Fishing or the Taking of Fish or Shellfish on or in its designated Village Marine Protected Area by:

(i.) Restricting all Approved Fishing Methods for a certain period of time;

(ii.) Limiting the type of Approved Fishing Methods allowed to be used in a Village Marine Protected Area;

(iii.) Banning all forms of Fishing in the Village Marine Protected Area;

(iv.) Restricting the area or areas within a Village Marine Protected Area where Fishing is allowed;

(v.) Restricting Fishing by declaring Open Seasons when Fishing is allowed;

(vi.) Restricting the total number of all Fish and/or Shellfish that a Person is allowed to Take during one (1) Day or other specified Time Period(s);

(vii.) Restricting the total number of a species of Fish and/or Shellfish that a Person is allowed to Take during one (1) Day or other specified Time Period(s);

(viii.) Restricting a Time Period during a Day when Fishing is allowed;

(ix.) Restricting the type or species of Fish that may be Taken;

(x.) Restricting the size of Fish that may be Taken by instituting size limitations requiring Taken Fish to exceed an overall Length of Fish;

(xi.) Banning all Night Fishing;

(xii.) Allowing only Subsistence Fishing or the Taking of Fish or Shellfish for Subsistence Uses or Cultural Uses;

(xiii.) Instituting harvest limits that limit the total amount of Fish or Shellfish or a type of Fish or Shellfish that can be Taken from the Village Marine Protected Area;

(xiv.) Banning all Commercial Fishing;

(xv.) Banning the Taking of Fish or Shellfish with the aid or use of lights; and/or,

(xvi.) Restricting or banning other activities in a Village Marine Protected Area including, but not limited to, swimming, wading, and surfing.

History: Rule 1-08, eff 2008.

24.1009 Prohibited Acts.

The following Fishing methods shall be Illegal Fishing Methods and are prohibited in any and all designated Village Marine Protected Areas and no Village, whether participating or not participating in the Community-based Fisheries Management Program, may allow or permit any of the following:

(a) Any Fishing method not listed as an Approved Fishing Method.

(b) Any Fishing, whether commercial, non-commercial, sport, subsistence, or for Cultural Uses, by the use of explosives, poisons, a Bleaching Agent, other noxious or Toxicant substances, Cyanide Fishing, electric shocking devices, SCUBA equipment or hookah equipment when Taking or Fishing for Fish or Shellfish or harvesting other marine life, including but not limited to the use of ava niu kini for the purpose of killing, stunning, disabling, Taking, or catching Fish or Shellfish, or in any way rendering Fish or Shellfish more easily caught.

(c) Any fisherman to carry or have in a fishermen's possession or control any explosive, poison, or other noxious or Toxicant substance in circumstances indicating an intention to use such explosive, poison, or other noxious or Toxicant substance for any of the purposes referred to in this paragraph. Any explosive, poison or other noxious or Toxicant substance found on board any Fishing Vessel, or in the possession of any Person on or in the Waters of American Samoa, unless the contrary can be proven, shall be presumed to be intended for the purpose referred to in this subsection.

(d) The Taking or attempt to Take Fish or Shellfish with any electrical device that operates by shocking with an electrical current for the purpose of killing, stunning, disabling, Taking, or catching Fish or Shellfish, or in any way rendering Fish or Shellfish more easily caught. Any electrical shocking device found on board any Fishing Vessel, or found in the possession of any Person on or in the Waters of American Samoa, shall be presumed, unless the contrary can be proven, to be intended for the purpose referred to in this subsection.

(e) Taking Fish by Fishing with the aid of any Self-Contained Underwater Breathing Apparatus (SCUBA) gear or any other Underwater Breathing Device except where exempted by the village and DMWR.

(f) Using any light to attract Fish for the purpose of Fishing or Taking Fish from the period one hour before sunset until one hour after sunrise, whether the light is floating, moored, or handheld.

(g) Taking Fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow.

(h) Any Sandmining in a Village's Marine Protected Area without a Sandmining permit from the Department.

(i) The intentional dumping or discarding of any trash or garbage on the shoreline, beach or Reef of a Village Marine Protected Area.

(j) The collection of any Fish or Shellfish or any marine organism for research unless a collection permit issued by the Department.

History: Rule 1-08, eff 2008.

24.1010 Damage to the Village Marine Protected Area.

It is a violation of the provisions of this Community-based Fisheries Management Program for any Person to deliberately or intentionally cause, or allow to be caused, any damage or destruction to the marine environment of any Village Marine Protected Area. This includes, but is not limited to:

(a) The dumping of trash or garbage into a Village Marine Protected Area, including the shoreline, beach or reef of a Village Marine Protected Area.

(b) The discharging of pollutants or Wastewater into a Village Marine Protected Area;

(c) The discharging of pollutants into any stream, creek, ava, river, estuary, swamp, water source, or upon the ground if there is a substantial likelihood that the pollutant will enter the Village Marine Protected Area.

(d) The act of Sandmining.

History: Rule 1-08, eff 2008.

24.1011 Protection of other Marine Life in a Village Marine Protected Area.

(a) No living Coral or Live Rock may be Taken or removed from a Village Marine Protected Area.

(b) No Marine Mammals or any part of a Marine Mammal may be Taken or removed from a Village Marine Protected Area.

History: Rule 1-08, eff 2008.

24.1012 Endangered Species.

No Village or Village and Enforcement Monitoring Committee may allow, permit, or authorize any Person to Take or attempt to Take any species of sea turtles and other endangered species listed as an endangered species in Title 50 of the Code of Federal Regulations sections 17.11 and 17.12, as amended or modified from time to time, or any species protected by any United States federal law.

History: Rule 1-08, eff 2008.

24.1013 Enforcement of Violations.

The following methods and procedures are authorized and available to enforce the provisions of this Community-based Fisheries Management Program.

(a) The Director may deputize and otherwise authorize a Village's Pulenu'u and one Village policeman to issue citations under the Community-based Fisheries Management Program.

(1) All persons to be deputized or authorized under this subsection shall receive full and proper training from the Department in the issuance of citations.

(2) The Village shall not have any power or authority to enforce any citation issued. Only the Department may enforce and pursue any citations issued for violations of the Community-based Fisheries Management Program or the Village by-laws.

(3) The original and all copies citations issued by the individual(s) authorized in this subsection (a) shall be submitted to the Department the next business day after issuance of the citation.

(b) The Department may issue citations and enforce any provision of the Community-based Fisheries Management Program and any provision of the Village by-laws.

(c) As a method of enforcement, the Department, in its sole discretion, may:

(i) Issue and enforce a citation;

(ii) Issue a warning; or

(iii) Seize any or all equipment(s) relevant to the violation

(iv) Take no action.

History: Rule 1-08, eff 2008.

24.1014 Form of Community-based Fisheries Management Program Citation.

The form of the citation shall be approved by the Department and copies of the form shall be stocked, ordered, provided and paid for by the Department.

History: Rule 1-08, eff 2008.

24.1015 Service of a Community-based Fisheries Management Program Citation.

The citation must be served by personal deliver of a copy of the citation to the defendant.

History: Rule 1-08, eff 2008.

24.1016 Training of individuals to enforce Village By-laws.

(a) The Department shall provide all training of the individual(s) from a Village that is to monitor the Village's Marine Protected Area.

(b) The number of individuals trained by the Department for each Village shall be only the number of persons reasonably needed to monitor the Village's Marine Protected Area.

History: Rule 1-08, eff 2008.

24.1017 Penalties.

The following penalties may be assessed by the Department against a Person who is issued a citation by the Department for violation of the Village by-laws or a violation of these regulations:

(a) A warning may be issued, at the discretion of the person authorized to issue citations for violations of the Village by-laws or these regulations.

(b) Require a Person to perform up to thirty (30) hours of community service and participate in

Coral Reef Classes given at the Department. Community service includes, but is not limited to, assisting Department staff and participating Villages with shoreline, beach and Marine Protected Area cleanup, installing signs for Village Marine Protected Areas and participating in Village monitoring activities.

(c) Pursuant to A.S.C.A. § 24.312(a) the Department may fine any Person who violates any provision of Department regulations and the Person fined shall be guilty of a class B misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00) or by a prison term in excess of fifteen (15) days but not to exceed six (6) months, or by both.

SECTION	OFFENSE	1ST Violation	2nd Violation	3rd Violation
24.1007	(a) – (b)	100.00	200.00	300.00
24.1008	(c): i-v and xi	100.00	200.00	300.00
24.1008	(c): vi-xvi except xi	50.00	100.00	200.00
24.1009	(g) Taking fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow	50.00	100.00	200.00
	(h) Sandmining in Village Marine Protected Area without DMWR permit	Individual: 100.00 Corporation: 200.00	Individual: 200.00 Corporation: 300.00	Individual: 300.00 Corporation: 500.00
	(i) Dumping/discarding trash on the shoreline beach or Reef of a Village Marine Protected Area	100.00	200.00	300.00
	(j) The collection of any Fish or Shellfish or any marine organism for research unless a collection permit issued by the Department	Individual: 50.00 Corporation: 100.00	Individual: 100.00 Corporation: 200.00	Individual: 200.00 Corporation: 300.00
24.1010	(a) The dumping of trash or garbage into a VMPA, including shoreline, beach or reef of a VMPA	100.00	200.00	300.00
	(b) The discharging of pollutants or Wastewater into a VMPA	100.00	200.00	300.00
	(c) The discharging of pollutants into any stream, creek, ava, river, estuary, swamp, water source, or upon the ground if there is a substantial likelihood that the pollutant will enter the VMPA	100.00	200.00	300.00
	(d) The act of Sandmining	100.00	200.00	300.00
24.1011	(a) No living Coral or Live Rock may be Taken or removed from a VMPA	50.00	100.00	200.00
	(b) No Marine Mamals or any part of a Marine Mammal may be taken or removed from a VMPA	25.00	50.00	100.00

History: Rule 1-08, eff 2008.

24.1018 Confiscation, seizure, and forfeiture of property.

(a) Property used in connection with a violation resulting in a conviction for violating any of the prohibited acts set forth in ASAC §24.1008 is subject to seizure and forfeiture.

(b) Upon a conviction of a person in whose possession the property was found, the court having jurisdiction over the criminal offense, notwithstanding any jurisdictional limitations on the amount in controversy, may make a finding that the property was used in connection with a violation and may order such property forfeited to DMWR.

(c) Notification of property seized under this section must be sent by certified mail to a registered owner within 14 days after seizure. If DMWR, after diligent inquiry, cannot ascertain the registered owner, the notice requirement is satisfied.

(d) DESTRUCTION OR DISPOSITION OF PROPERTY.–All property forfeited under this section may be destroyed, used by DMWR, disposed of by gift to charitable or state institutions, or sold, with the proceeds derived from the sale deposited into the Fund to be used for law enforcement purposes.

History: Rule 1-08, eff 2008.

24.1019 Authority.

Pursuant to the authority granted to the Department of Marine and Wildlife Resources under ASCA § 24.0304 and pursuant to the Authority under the Community-based Fisheries Management Program, the following Village by-laws govern and provide the manner for each Village's participation in the Community-based Fisheries Management Program.

History: Rule 1-08, eff 2008.

24.1020 Purpose.

The by-laws provide each Village with a set of guidelines and rules to implement and utilize in the Village's participation in the Community-based Fisheries Management Program.

History: Rule 1-08, eff 2008.

24.1021 Definitions.

The definitions as set forth in the Community-based Fisheries Management Program shall apply to the terms used in these by-laws.

History: Rule 1-08, eff 2008.

24.1022 Marking of a Village Marine Protected Area.

(a) A Village's designated Village Marine Protected Area's boundaries must be marked in a manner reasonably obvious to inform the public that access to the area has been restricted.

(b) A Village's Marine Protected Area shall be marked by the use of one or more of the following:

(i) Signs;

(ii) Posted Notices;

(iii) Published Notices;

(iv) Anchored or secured Floats that indicate the area is a Village Marine Protected Area.

(c) Any sign or notice marking a Village's Marine Protected Area shall be posted in both Samoan and English.

History: Rule 1-08, eff 2008.

24.1023 Fishing or Taking Fish in a Village Marine Protected Area.

(a) The following methods of Fishing or Taking Fish or Shellfish shall be the only Approved Fishing Methods for Fishing or Taking Fish or Shellfish in any Village's Marine Protected Area.

(i.) Fishing with a rod and reel;

(ii.) Fishing with a bamboo pole;

(iii.) Fishing with a hand line;

(iv.) Fishing by Gleaning;

(v.) Fishing with a hand thrown pole spear;

(vi.) Fishing with a throw net;

(vii.) Fishing with a Fish or Shellfish Trap;

(viii.) Traditional Samoan fishing methods such as the use of Lau and the enu and spear; and

(ix.) Fishing using spear gun(s).

(b) Any other method of Fishing or Taking Fish, other than the methods listed in subsection (a) of this section, shall be an illegal Fishing method and shall violate the provisions of the Community-based Fisheries Management Program.

(c) Any Village may further restrict Fishing or the Taking of Fish or Shellfish on or in its designated Village Marine Protected Area by:

(i.) Restricting all Approved Fishing Methods for a certain period of time;

(ii.) Limiting the type of Approved Fishing Methods allowed to be used in a Village Marine Protected Area;

(iii.) Banning all forms of Fishing in the Village Marine Protected Area;

(iv.) Restricting the area or areas within a Village Marine Protected Area where Fishing is allowed;

(v.) Restricting Fishing by declaring Open Seasons when Fishing is allowed;

(vi.) Restricting the total number of all Fish and/or Shellfish that a Person is allowed to Take during one (1) Day or other specified Time Period(s);

(vii.) Restricting the total number of a species of Fish and/or Shellfish that a Person is allowed to Take during one (1) Day or other specified Time Period(s);

(viii.) Restricting a Time Period during a Day when Fishing is allowed;

(ix.) Restricting the type or species of Fish that may be Taken;

(x.) Restricting the size of Fish that may be Taken by instituting size limitations requiring Taken Fish to exceed an overall Length of Fish;

(xi.) Banning all Night Fishing;

(xii.) Allowing only Subsistence Fishing or the Taking of Fish or Shellfish for Subsistence Uses or Cultural Uses;

(xiii.) Instituting harvest limits that limit the total amount of Fish or Shellfish or a type of Fish or Shellfish that can be Taken from the Village Marine Protected Area;

(xiv.) Banning all Commercial Fishing;

(xv.) Banning the Taking of Fish or Shellfish with the aid or use of lights; and/or,

(xvi.) Restricting or banning other activities in a Village Marine Protected Area including, but not limited to, swimming, wading, and surfing.

History: Rule 1-08, eff 2008.

24.1024 Prohibited Acts.

The following Fishing methods shall be Illegal Fishing Methods and are prohibited in any and all designated Village Marine Protected Areas and no Village, whether participating or not participating in the Community-based Fisheries Management Program, may allow or permit any of the following:

(a) Any Fishing method not listed as an Approved Fishing Method.

(b) Any Fishing, whether commercial, non-commercial, sport, subsistence, or for Cultural Uses, by the use of explosives, poisons, a Bleaching Agent, other noxious or Toxicant substances, Cyanide Fishing, electric shocking devices, SCUBA equipment or hookah equipment when Taking or Fishing for Fish or Shellfish or harvesting other marine life, including but not limited to the use of ava niu kini for the purpose of killing, stunning, disabling, Taking, or catching Fish or Shellfish, or in any way rendering Fish or Shellfish more easily caught

(c) Any fisherman to carry or have in a fishermen's possession or control any explosive, poison, or other noxious or Toxicant substance in circumstances indicating an intention to use such explosive, poison, or other noxious or Toxicant substance for any of the purposes referred to in this paragraph. Any explosive, poison or other noxious or Toxicant substance found on board any Fishing Vessel, or in the possession of any Person on or in the Waters of American Samoa, unless the contrary can be proven, shall be presumed to be intended for the purpose referred to in this subsection.

(d) The Taking or attempt to Take Fish or Shellfish with any electrical device that operates by shocking with an electrical current for the purpose of killing, stunning, disabling, Taking, or catching Fish or Shellfish, or in any way rendering Fish or Shellfish more easily caught. Any electrical shocking device found on board any Fishing Vessel, or found in the possession of any Person on or in the Waters of American Samoa, shall be presumed, unless the contrary can be proven, to be intended for the purpose referred to in this subsection.

(e) Taking Fish by Fishing with the aid of any Self-Contained Underwater Breathing Apparatus (SCUBA) gear or any other Underwater Breathing Device except where exempted by the village and DMWR.

(f) Using any light to attract Fish for the purpose of Fishing or Taking Fish from the period one hour before sunset until one hour after sunrise, whether the light is floating, moored, or handheld.

(g) Taking Fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow.

(h) Any Sand Mining in a Village's Marine Protected Area without a Sand Mining permit from the Department.

(i) The intentional dumping or discarding of any trash or garbage on the shoreline, beach or Reef of a Village Marine Protected Area.

(j) The collection of any Fish or Shellfish or any marine organism for research unless a collection permit issued by the Department.

History: Rule 1-08, eff 2008.

24.1025 Damage to the Village Marine Protected Area.

It is a violation of the provisions of this Community-based Fisheries Management Program for any Person to deliberately or intentionally cause, or allow to be caused, any damage or destruction to the marine environment of any Village Marine Protected Area. This includes, but is not limited to:

(a) The dumping of trash or garbage into a Village Marine Protected Area, including the shoreline, beach or reef of a Village Marine Protected Area.

(b) The discharging of pollutants or Wastewater into a Village Marine Protected Area;

(c) The discharging of pollutants into any stream, creek, ava, river, estuary, swamp, water source, or upon the ground if there is a substantial likelihood that the pollutant will enter the Village Marine Protected Area.

(d) The act of Sand Mining.

History: Rule 1-08, eff 2008.

24.1026 Protection of other Marine Life in a Village Marine Protected Area.

(a) No living Coral or Live Rock may be Taken or removed from a Village Marine Protected Area.

(b) No Marine Mammals or any part of a Marine Mammal may be Taken or removed from a Village Marine Protected Area.

History: Rule 1-08, eff 2008.

24.1027 Endangered Species.

No Person shall Take or attempt to Take any species of sea turtles and other endangered species listed as an endangered species in Title 50 of the Code of Federal Regulations sections 17.11 and 17.12, as amended or modified from time to time, or any species protected by any United States federal law.

History: Rule 1-08, eff 2008.

24.1028 Issuance of Citations – Penalties.

(a) The Director and such department employees as the Director designates shall have the authority to issue citations for violations of these rules.

(b) Penalties upon a finding of guilty shall be as follows:

SECTION	OFFENSE	1ST Violation	2nd Violation	3rd Violation
24.1023	(c): i-v and xi	100.00	200.00	300.00
24.1023	(c): vi-xvi except xi	50.00	100.00	200.00
24.1024	(a) Using any fishing method other than the approved fishing methods	100.00	200.00	300.00
24.1025	(g) Taking fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow	50.00	100.00	200.00
	(h) Sandmining in Village Marine Protected Area without DMWR permit	Individual: 100.00 Corporation: 100.00	Individual: 200.00 Corporation: 300.00	Individual: 300.00 Corporation: 500.00
	(i) Dumping/discarding trash on the shoreline beach or Reef of a Village Marine Protected Area	100.00	200.00	300.00
	(b) Discharging of pollutants or wastewater into a Village	100.00	200.00	300.00

	Marine Protected Area			
SECTION 24.1023 24.1023	(c) Discharging of pollutants into any stream, creek, ava, river, estuary, swamp, water source, or upon the ground if there is a substantial likelihood that the pollutant will enter the Village Marine Protected Area	100.00	200.00	300.00
	OFFENSE	1ST Violation	2nd Violation	3rd Violation
	(c): i-v and xi	100.00	200.00	300.00
	(c): vi-xvi except xi	50.00	100.00	200.00
24.1024	(a) Using any fishing method other than the approved fishing methods	100.00	200.00	300.00
	(g) Taking fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow	50.00	100.00	200.00

History: Rule 1-08, eff 2008.

24.1029 Confiscation, seizure, and forfeiture of property.

(a) Property used in connection with a violation resulting in a conviction for violating any of the prohibited acts set forth in ASAC §24.1023 is subject to seizure and forfeiture.

(b) Upon a conviction of a person in whose possession the property was found, the court having jurisdiction over the criminal offense, notwithstanding any jurisdictional limitations on the amount in controversy, may make a finding that the property was used in connection with a violation and may order such property forfeited to DMWR.

(c) Notification of property seized under this section must be sent by certified mail to a registered owner within 14 days after seizure. If DMWR, after diligent inquiry, cannot ascertain the registered owner, the notice requirement is satisfied.

(d) DESTRUCTION OR DISPOSITION OF PROPERTY.–All property forfeited under this section may be destroyed, used by DMWR, disposed of by gift to charitable or state institutions, or sold, with the proceeds derived from the sale deposited into the Fund to be used for law enforcement purposes.

History: Rule 1-08, eff 2008.

[End Of Title 24 – Chapter 10]

TITLE 24 – CHAPTER 11 – HUNTING

Sections

24.1101 Definitions.

(a) "Department" means the Department of Marine and Wildlife Resources (A.S.C.A. §24.0302(1)).

(b) "Director" means the director DMWR (A.S.C.A., §24.0302(2)).

(c) "Wildlife" means all mammals, birds reptiles and amphibians that exist in a wild state and shall not be taken except as authorized by rule of the director (A.S.C.A., §24.0302(6)).

(d) "Hunting" means to take or attempt to take any wildlife species using guns, shotguns, bow and arrow, slingshot or spear. It also means to possess in a readily usable form any of these devices without a valid reason in any area where wildlife could be taken.

(e) "Native Bat" means any of the bat species found in the territory of American Samoa including: Emballonura semicaudata, the sheath tailed bat, Pteropus tonganus, the white necked or tongan bat, and Pteropus samoensis, the samoan bat. The term includes bats in all stages of development and all body parts.

(f) "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct.

(g) "Trapping" means to take or attempt to take any wildlife species using passive devices such as spring traps, snares, deadfalls, mist nets, and pitfall traps. It does not include traps specifically designed or sold for the capture of rats and mice.

(h) "Wild bird" means any bird species of the class Aves found in the territory of American Samoa.

History:Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1102 Season, Hunting areas, fees and Bag limits.

(a) Each year, the director of the department shall issue a proclamation establishing the following for the taking of wildlife:

(1) Seasons,

(2) Hunting areas,

(3) License and permit fees, and

(4) Bag limits.

(b) Annual proclamations shall be effective beginning on January 1st through December 31st of each year, or until superseded by further proclamation of the director.

(c) Copies of the current proclamation will be made available at the department office in Fagatogo.

(d) Any taking of wildlife, including hunting and trapping, not expressly allowed in the proclamation or otherwise permitted by law is prohibited.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1104 Taking of pest species.

(a) The following wildlife may be taken at any time and no license or permit is required to take them:

(1) Rats and mice,

(2) The marine toad,

(3) The brown tree snake (Boinga irregularis), and

(4) Feral dogs and cats.

(b) Other types of wildlife may be destroyed as pest species with a special permit issued by the department, as provided in this regulation.

History:Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1105 Wild Birds.

(a) It is unlawful to take, attempt to take, or to hunt any species of wild bird unless explicitly allowed during an officially proclaimed hunting season.

(b) It is unlawful to sell, offer for sale, or purchase any species of wild bird.

(c) It is unlawful to possess any species of wild bird that was not taken during an officially proclaimed hunting season. There shall be a rebuttable presumption that wild birds in an unfrozen or unprocessed state were not taken during an official hunting season unless such a season is currently in progress.

(d) It is unlawful to import or export any species of wild bird.

(e) It is unlawful to trap or attempt to trap any species of wild bird.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1106 Native Bats

(a) It is unlawful to take, attempt to take, or to hunt any species of native bat unless explicitly allowed during an officially proclaimed hunting season.

(b) It is unlawful to sell, offer for sale, or purchase any species of native bat.

(f) It is unlawful to possess any species of native bat that was not taken during an officially proclaimed hunting season. There shall be a rebuttable presumption that native bats in an unfrozen or unprocessed state were not taken during an official hunting season unless such a season is currently in progress.

(g) It is unlawful to import or export any species of native bat.

(h) It is unlawful to trap or attempt to trap any species of native bat.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1107 Wild Pigs.

(a) After January 1, 1996 it is prohibited to take wild pigs without possessing a valid hunting license.

(b) It is unlawful take wild pigs with shotguns of 16 gauge or smaller or with shotguns shooting shells containing #4 or smaller pellets.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1108 Other Species.

It is unlawful to take, attempt to take, import, export, sell, offer to sell, purchase or possess the pacific boa, Candoia bibroni.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1109 Licenses and Permits.

(a) Hunting License: A hunting license is required for all individuals wishing to engage in hunting activities after January 1, 1996. This license shall be issued upon approval of the application and payment of the required fee. License fees shall be published in the annual proclamation.

(b) Scientific Collecting Permit: Any person or institution with a bona fide scientific or educational purpose may apply in writing to the director for a Scientific Collection Permit. The director may deny, approve or establish conditions for any such permit.

(c) Pest eradication permit: In cases where it can be demonstrated that a species of wildlife is causing significant economic damage or is creating a health or safety hazard, the affected party may apply to the Department for a Pest Eradication Permit. This permit may allow the permittee to take wildlife in a manner otherwise prohibited by these regulations. This permit may only be issued following a determination by the Department that its issuance will not result in significant impact to that species. The director may deny, approve or establish conditions for any such permit.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1110 Penalties.

(a) Pursuant to 24.0311 (a) A.S.C.A., any person who violates any provision of these laws shall be guilty of a class B misdemeanor punishable by a fine not to exceed five hundred dollars ($500) or by a prison term in excess of fifteen (15) days but not to exceed six (6) months, or by both.

(b) Pursuant to 24.0311 (b) A.S.C.A., any business entity found in violation of these laws shall be

fined not less than one thousand dollars ($1,000) per violation.

(c) Pursuant to 24.0311 (b) A.S.C.A., any property taken or possessed in violation of these laws may be subject to forfeiture to the government pursuant to a civil proceeding in the High Court of American Samoa.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

END OF TITLE 24 – ECOSYSTEM PROTECTION AND DEVELOPMENT