

NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 19

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Prepared by the Legislative Council staff
for the
Administrative Rules Committee

TITLE 33
HEALTH, DEPARTMENT OF

STAFF COMMENT: Section 33-07-04-24 was reprinted to change the style of the tabular material. No substantive change was made in the section.

Several pages were replaced in Article 33-15 at the request of the Department of Health as a means to correct grammatical and nonsubstantive errors. These changes are not included in the special supplement for the Administrative Rules Committee in order to save space.

A synopsis of the changes to Tables 1 and 2 of Chapter 33-15-02 and the changes to Section 33-15-14-02 is contained in other committee material.

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Table 1. AMBIENT AIR QUALITY STANDARDS

Air Contaminants	Standards (Maximum Permissible Concentrations)	
<u>Particulates</u>	60	micrograms per cubic meter of air, maximum annual geometric mean
Total Suspended Particulate	150	micrograms per cubic meter of air, maximum 24-hour concentration not to be exceeded more than once per year
Settled Particulate (Dustfall)	15	tons per square mile per month, maximum 3-month arithmetic mean in residential areas
Coefficient of Haze	0.4	Coh. per 1,000 lineal feet, maximum annual geometric mean
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<u>Sulfur Oxides</u>	60	micrograms per cubic meter of air (0.02 ppm), maximum annual arithmetic mean
Sulfur Dioxide	260	micrograms per cubic meter of air (0.10 ppm), maximum 24-hour concentration
Reactive Sulfur (Sulfation)	0.25	milligram sulfur trioxide per 100 square centimeters per day, maximum annual arithmetic mean
Suspended Sulfate	4	micrograms per cubic meter of air, maximum annual arithmetic mean
Sulfuric Acid Mist	12	micrograms per cubic meter of air, maximum 24-hour concentration not to be exceeded over 1 percent of the time
Sulfur Trioxide, or any combination thereof	12	micrograms per cubic meter of air, maximum 24-hour concentration not to be exceeded over 1 percent of the time
	30	micrograms per cubic meter of air, maximum 1-hour concentration not to be exceeded over 1 percent of the time

Hydrogen Sulfide	45	micrograms per cubic meter of air (0.032 ppm), maximum 1/2-hour concentration not to be exceeded more than twice in any 5 consecutive days
	75	micrograms per cubic meter of air (0.054 ppm), maximum 1/2-hour concentration not to be exceeded over twice a year
Carbon Monoxide	10	milligrams per cubic meter of air (9 ppm), maximum 8-hour concentration not to be exceeded more than once per year
	40	milligrams per cubic meter of air (35 ppm), maximum 1-hour concentration not to be exceeded more than once per year
Photochemical Oxidants	160	micrograms per cubic meter of air
Ozone	235	(0.08 ppm) (0.12 ppm), maximum 1-hour concentration not to be exceeded more than once per year
Hydrocarbons	160	micrograms per cubic meter of air (0.24 ppm), maximum 3-hour concentration (6 to 9 a.m.) not to be exceeded more than once per year
Nitrogen Dioxide	100	micrograms per cubic meter of air (0.05 ppm), maximum annual arithmetic mean
	200	micrograms per cubic meter of air (0.1 ppm), maximum 1-hour concentration not to be exceeded over 1 percent of the time in any 3-month period
Lead	1.5	micrograms per cubic meter of air, maximum arithmetic mean averaged over a calendar quarter

History: Amended effective March 1, 1980

Table 2. METHODS OF AIR CONTAMINANT MEASUREMENT
AIR CONTAMINANT - PARTICULATES

Sampling Method	Sampling Interval*	Analytical Method
<u>TOTAL SUSPENDED PARTICULATES</u>		
High-Volume Sampling	24 hours	Gravimetric - Reference Method for the Determination of Suspended Particulates in the Atmosphere (High Volume Method). Code of Federal Regulations, Title 40, Chapter I, Part 50, National Primary and Secondary Ambient Air Quality Standards, Appendix B.
<u>SETTLED PARTICULATE (Dustfall)</u>		
Dustfall Jar	1 month	Gravimetric - ASTM D 1739-70.
<u>COEFFICIENT OF HAZE</u>		
Paper Tape Sampling	3 hours	Light Transmittance - ASTM D 1704-61.

Table 2. (continued)
AIR CONTAMINANT - SULFUR OXIDES

Sampling Method	Sampling Interval*	Analytical Method
<u>SULFUR DIOXIDE</u>		
Absorption	Continuous, 1 Hr. or 24 Hours	Colorimetric - Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method). Code of Federal Regulations, Title 40, Chapter I, Part 50, National Primary and Secondary Ambient Air Quality Standards, Appendix B.
<u>REACTIVE SULFUR (Sulfation)</u>		
Lead Peroxide Plate	1 Month	Turbidimetric, Lead Peroxide Plate - Huey, N.A., "The Lead Dioxide Estimation of Sulfur Dioxide Pollution", Journal of the Air Pollution Control Assoc. Vol. 18, pp. 610-611, September 1968.
<u>SUSPENDED SULFATE</u>		
High-Volume Sampling	24 Hours	Turbidimetric, Barium Sulfate Method - Selected Methods for the Measurement of Air Pollutants. U.S. Public Health Service Publication No. 999-AP-11, May 1965.
<u>SULFURIC ACID MIST</u> <u>SULFUR TRIOXIDE</u>		
Filter Paper	1 Hour to 24 Hours	Tritation - Commins, B.T. "Determination of Particulate Acid in Town Air." Analyst, Vol. 88, pp. 364-367, May 1963.

Table 2. (continued)
AIR CONTAMINANT - HYDROGEN SULFIDE

Sampling Method	Sampling Interval*	Analytical Method
(a) Paper Tape Sampling	1/2 Hour	Light Transmittance, Lead Acetate Impregnated Tape - Sensenbaugh, J.D. and Hemeon, W.C.L., "A Low Cost Sampler for Measurement of Low Concentration of Hydrogen Sulfide", Air Repair Vol. 4, No. 1, pp. 5-7, May 1954.
(b) Absorption	1/2 Hour	Colorimetric - Jacobs, Braverman, Hochheiser, "Ultramicrodetermination of Sulfides in Air", Anal. Chem. Vol. 29, p. 1349, 1957.

Table 2. (continued)
AIR CONTAMINANT - CARBON MONOXIDE

Sampling Method	Sampling Interval*	Analytical Method
Absorption of Infrared Radiation	Continuous 1 Hour or 8 Hours	Non-Dispersive Infrared Spectrometry - Reference Method for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Spectrometry). Code of Federal Regulations, Title 40, Chapter I, Part 50, National Primary and Secondary Ambient Air Quality Standards, Appendix C.

Table 2. (continued)

AIR CONTAMINANT - PHOTOCHEMICAL-OXIDANTS OZONE

Sampling Method	Sampling Interval*	Analytical Method
Chemi-luminescent	Continuous, 1 Hour	Chemiluminescent, Photomultiplier Detector - <u>Reference Method for the Measurement of Photochemical Oxidants Corrected for Interferences Due to Nitrogen Oxide and Sulfur Dioxide</u> Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere. Code of Federal Regulations, Title 40, Chapter I, Part 50, National Primary and Secondary Ambient Air Quality Standards, Appendix D.

Table 2. (continued)

AIR CONTAMINANT - HYDROCARBONS

Sampling Method	Sampling Interval*	Analytical Method
Flame Ionization Detector	Semi-continuous, 3 Hours	Flame Ionization - Reference Method for the Determination of Hydrocarbons Corrected for Methane. Code of Federal Regulations, Title 40, Chapter I, Part 50, National Primary and Secondary Ambient Air Quality Standards, Appendix E.

Table 2. (continued)

AIR CONTAMINANT - NITROGEN DIOXIDE

Sampling Method	Sampling Interval*	Analytical Method
Absorption	Continuous, 1 Hour	Colorimetric - Reference Method for the Determination of Nitrogen Dioxide in the Atmosphere (24-Hour Sampling Method). Code of Federal Regulations, Title 40, Chapter I, Part 50, National Primary and Secondary Ambient Air Quality Standards, Appendix F.

Table 2. (continued)

AIR CONTAMINANT - LEAD

Sampling Method	Sampling Interval*	Analytical Method
<u>High-Volume Sampling</u>	<u>24 Hours</u>	<u>Atomic Absorption Spectrometry - Reference Method for The Determination of Lead in Suspended Particulate Matter Collected from Ambient Air Code of Federal Regulations, Title 40, Chapter I, Part 50, National Primary and Secondary Ambient Air Quality Standards, Appendix G.</u>

* Normal Sampling Interval. Other Sampling Intervals May be Used if Approved by the Department.

History: Amended effective March 1, 1980.

33-15-14-02. PERMIT TO CONSTRUCT.

1. Permit to construct required. No construction, installation, or establishment of a new stationary source within a source category designated in section 33-15-14-01 shall be commenced unless the owner or operator thereof shall file an application for, and receive, a permit to construct in accordance with this chapter. This requirement shall also apply to any source for which a federal standard of performance has been promulgated prior to such filing of an application for a permit to construct. A list of sources for which a federal standard has been promulgated, and the standards which apply to such sources, shall be available at the department's offices.
2. Application for permit to construct.
 - a. Application for a permit to construct a new installation or source shall be made by the owner or operator thereof on forms furnished by the department.
 - b. A separate application is required for each new installation or source subject to this chapter.
 - c. Each application shall be signed by the applicant, which signature shall constitute an agreement that the applicant will assume responsibility for the construction or operation of the new installation or source in accordance with this article and will notify the department, in writing, of the startup of operation of such source.
3. Alterations to source.
 - a. The addition to or enlargement of or replacement of or major alteration in any stationary source, already existing, which is undertaken pursuant to an approved compliance schedule for the reduction of emissions therefrom, shall be exempt from the requirements of this section.
 - b. Any physical change in, or change in the method of operation of, a stationary source already existing which increases or may increase the emission rate of any pollutant for which an ambient air quality standard has been promulgated under this article or which results in the emission of any such pollutant not previously emitted shall be considered to be construction, installation, or establishment of a new source, except that:
 - (1) Routine maintenance, repair, and replacement shall not be considered a physical change.
 - (2) The following shall not be considered a change in the method of operation:
 - (a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source.

(b) An increase in the hours of operation.

4. Submission of plans - deficiencies in application. As part of an application for a permit to construct, the department may require the submission of plans, specifications, siting information, emission information, descriptions and drawings showing the design of the installation or source, the manner in which it will be operated and controlled, the emissions expected from it, and the effects on ambient air quality. Any additional information, plans, specifications, evidence or documentation that the department may require shall be furnished upon request. Within twenty days of the receipt of the application, the department shall advise the owner or operator of the proposed source of any deficiencies in the application. In the event of a deficiency, the date of receipt of the application shall be the date upon which all requested information is received.
5. Review of application - standard for granting permits to construct. The department shall review any plans, specifications, and other information submitted in application for a permit to construct and from such review shall, within thirty days of the receipt of the completed application, make the following preliminary determinations:
 - a. Whether the proposed project will be in accord with this article, including whether the operation of any new stationary source at the proposed location will result in any applicable ambient air quality standards being exceeded.
 - b. Whether the proposed project will provide all known available and reasonable methods of emission control. Whenever a standard of performance is applicable to the source, compliance with this criterion will require provision for emission control which will, at least, satisfy such standards.
6. Public participation - final action on application. This subsection shall apply only to those affected facilities designated under chapters 33-15-12, 33-15-13, and 33-15-15 or for construction of other sources for which the actual emissions of any contaminant would be greater than fifty tons [45.36 metric tons] per year, one thousand pounds [453.59 kilograms] per day, or one hundred pounds [45.36 kilograms] per hour, whichever is most restrictive or for which the department has determined to have a major impact on air quality or for which a request for a public comment period has been received from the public. The department shall:
 - a. Within thirty days of the receipt of the completed application, make available in at least one location in the county or counties in which the proposed project is to be located, a copy of its preliminary determinations and copies of or a summary of the information considered in making such preliminary determinations.
 - b. Publish notice to the public by prominent advertisement, within thirty days of the receipt of the completed application, in the region affected, of the opportunity for written comment on the

preliminary determinations. The public notice shall include the proposed location of the source.

- c. Within thirty days of the receipt of the completed application, deliver a copy of the notice to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: State and local air pollution control agencies, the chief executive of the city and county; any comprehensive regional land use planning agency; the regional administrator of the United States environmental protection agency; and any state, federal land manager or Indian governing body whose lands will be significantly affected by the source's emissions.
 - d. Allow thirty days for public comment.
 - e. Consider all public comments properly received, in making the final decision on the application.
 - f. Allow the applicant to submit written responses to public comments received by the department, within ten days of the receipt of such comments.
 - g. Take final action on the application within thirty days of the close of the public comment period.
7. Denial of permit to construct. If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of any one of subdivision a or b of subsection 5 in the negative, it shall deny the permit and notify the applicant, in writing, of the denial to issue a permit to construct.
- If a permit to construct is denied, the construction, installation, or establishment of the new stationary source shall be unlawful. No permit to construct or modify shall be granted if such construction, or modification, or installation, will result in a violation of these regulations or in a violation of the ambient air quality standards.
8. Issuance of permit to construct. If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of subdivision a or b of subsection 5 in the affirmative, the department shall issue a permit to construct. The permit may provide for conditions of operation as provided in subsection 9.
9. Permit to construct - conditions. The department may impose any reasonable conditions upon a permit to construct, including conditions concerning:
- a. Sampling, testing, and monitoring of the facilities or the ambient air or both.
 - b. Trial operation and performance testing.

- c. Prevention and abatement of nuisance conditions caused by operation of the facility.
- d. Recordkeeping and reporting.
- e. Compliance with applicable rules and regulations in accordance with a compliance schedule.

The violation of any conditions so imposed may result in revocation or suspension of the permit or other appropriate enforcement action.

10. Scope.

- a. The issuance of a permit to construct for any source shall not affect the responsibility of an owner or operator to comply with applicable portions of a control strategy affecting that source.
- b. A permit to construct shall become invalid if construction is not commenced within eighteen months after receipt of such permit, if construction is discontinued for a period of eighteen months or more; or if construction is not completed within a reasonable time. The department may extend the eighteen month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date. In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

11. Permit to construct application processing fee. Any construction, installation, or establishment of a new stationary source requiring a permit to construct under subsections 1 and 3 is required to pay a permit to construct application processing fee to the North Dakota state department of health as follows:

- a. A filing fee of one hundred dollars plus an application processing fee based on actual processing costs, including computer data processing costs, incurred by the department for all sources subject to chapters 33-15-12, 33-15-13, and 33-15-15 and other sources which involve a major analysis the cost of which would exceed one hundred dollars, as determined by the department. The fee shall be paid on the following basis:
 - (1) The filing fee of one hundred dollars shall be submitted with the permit application.
 - (2) A record of all permit to construct application processing costs incurred shall be maintained by the department.
 - (3) Upon receipt of an application, the department will inform the applicant of the probable total processing fee and the billing

schedule that will be utilized in processing the application. If the applicant chooses, the applicant may withdraw the application at this point without paying any processing fees.

(4) Following the end of the public comment period or the public hearing, or both, and after final determinations on the application have been made, a final statement will be sent to the applicant containing the remaining actual processing costs incurred by the department.

b. A filing fee of twenty-five dollars for all sources other than those sources designated in subdivision a shall be submitted with the permit application.

History: Amended effective March 1, 1980.

General Authority
NDCC 23-25-03,
28-32-02

Law Implemented
NDCC 23-15-04.1,
23-15-04.2

TITLE 91

WHEAT COMMISSION

STAFF COMMENT: The Attorney General's office determined that the Wheat Commission is not an administrative agency under NDCC Chapter 28-32 because decisions of the commission are not appealable. However, the commission has voluntarily placed its rules in the format required for publication in the Administrative Code. The change to Section 91-02-01-02 was effective July 1, 1979, the date the 1979 legislative change to NDCC Section 4-28-07 took effect.

TITLE 91

WHEAT COMMISSION

The Wheat Commission is not an administrative agency as defined by North Dakota Century Code section 28-32-01 with respect to its rulemaking process. Therefore, the commission is not subject to the Administrative Agencies Practice Act (North Dakota Century Code chapter 28-32) with respect to its rules. However, for public information purposes the commission has placed its rules in the style and format required for the North Dakota Administrative Code and the rules of the commission are published as title 91.

Article

91-01 General Administration

91-02 Wheat Tax Levy

91-02-01-02. WHEAT TAX LEVY. There shall be a levy of ~~two~~ three mills per bushel [35.24 liters] by weight upon all wheat grown in the state and sold through commercial channels by a producer to a first purchaser. The tax will be levied at the time of sale and deducted from the price paid. In the case of a lien, pledge, or mortgage, the tax shall be deducted from the proceeds of loan or claim secured. This levy is subject to adjustment at the time of settlement if the bushel amount was not accurately determined at disbursement.

History: Amended effective July 1, 1979.

General Authority
NDCC 4-28-06

Law Implemented
NDCC 4-28-07