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TITLE 11

Audiology and Speech-Language Pathology,
Board of Examiners on

OCTOBER 1989

11-02-01-04. Licensure renewal. Licenses are renewable by January first of each year. They must be renewed on forms provided by the board. The renewal forms must be accompanied by the renewal fee and proof of meeting the continuing education requirements. A person who fails to renew the person's license after two years of its expiration date may not renew it, and it may not be restored, reissued, or reinstated. Such persons may reapply for a new license if such persons meet the requirements of North Dakota Century Code chapter 43-37 and this article. An individual may be granted a second licensure only once in a five-year period. If a person is unlicensed for a period of five years from either holding a license or passing the examination, the board may require that such person retake and pass the examination prior to relicensure.

History: Amended effective May 1, 1984; October 1, 1989.
General Authority: NDCC 43-37-06
Law Implemented: NDCC 43-37-06

11-02-02-02. Code of ethics. The board subscribes to the code of ethics of the American speech-language-hearing association as revised January 1, 1986. This code is incorporated in the rules by reference except that a certificate of clinical competence is not required to practice speech-language pathology and audiology in North Dakota.

History: Effective May 1, 1984; amended effective October 1, 1989.
General Authority: NDCC 43-37-06
Law Implemented: NDCC 43-37-06

11-02-02-03. Unacceptable professional conduct. The following constitute unacceptable professional conduct by a licensed audiologist or speech-language pathologist and subject such licensee or potential licensee to sanction:

1. Taking financial advantage of a client, or using one's position within an agency to enhance one's private practice or the private practice of others for personal gain.
2. Entering into any illegal acts with a client.
3. Participating in, condoning, or being an accessory to dishonesty, fraud, deceit, or misrepresentation in the practice of audiology or speech-language pathology.
4. Not providing clients with accurate and complete information regarding the extent and nature of the services available to them.
5. Convicted of a criminal act which affects the practice of the profession. (North Dakota Century Code section 12.1-33-02.1)
6. Violating any federal or state confidentiality client care regulation statutes.
7. Violating any federal or state discrimination statutes or regulations.
8. Exploiting relationships with clients such as participating in or soliciting sexual relationships during the time of services and for twelve months following the termination of services.
9. Refusal to seek adequate and appropriate treatment for any illness or disorder which interferes with professional functioning or ability to perform the basic expected functions, or both, of an audiologist or speech-language pathologist.
10. Using misrepresentation in the procurement of licensing as an audiologist or speech-language pathologist or knowingly assisting another in the procurement of licensing through misrepresentation. Misrepresentation of professional qualifications, certifications, accreditations, affiliation, and employment experiences.
11. Failure to report through the proper channels the incompetent, unethical, or illegal practice of any licensed audiologist or speech-language pathologist who is providing such services.
12. Participating in activities that constitute a conflict of professional interest and adversely affect the licensee's ability to provide audiology or speech-language pathology services.
13. Violating any of the principles of ethics as listed in the code of ethics of the American speech-language-hearing association as revised January 1, 1986.

14. Providing any inaccurate, misleading, or false information to the board in regard to a licensure action.

History: Effective October 1, 1989.

General Authority: NDCC 43-37-06

Law Implemented: NDCC 43-37-06, 43-37-13

TITLE 18.5
Credit Review Board

DECEMBER 1989

18.5-01-01-01. History.

1. The provisions of North Dakota Century Code chapter 6-09.10 were established in 1985, setting up a credit review board to deal with the matter of ever increasing farm foreclosures. The board was given authority to negotiate with lenders on behalf of farmers and to provide interest subsidies to eligible farmers for eligible purchases, refinancing, or redemptions of the farmer's home-quarter.
2. In 1987, chapter 6-09.10 was amended to consolidate the negotiations undertaken by the board and the department of agriculture's farm credit counseling program. North Dakota Century Code sections 4-01-19.2 and 4-01-19.3 were repealed.
- ~~2.~~ 3. In 1987, sections 6-09.10-08.1 through 6-09.10-08.6 were added to North Dakota Century Code chapter 6-09.10 to provide further assistance to financially distressed farmers and small businesses in the form of legal and tax assistance. Two hundred thousand dollars were appropriated to the board to provide such assistance under the administration and supervision of the commissioner of agriculture and the board.
4. In 1989, chapter 6-09.10 was further amended. The farm credit counseling program was renamed the agricultural mediation service. The commissioner of agriculture was given additional authority to contract with mediators to mediate between a farmer and a farmer's creditors.

History: Effective January 1, 1988; amended effective December 1, 1989.
General Authority: NDCC 28-32-02.1
Law Implemented: NDCC 28-32-02.1

18.5-01-01-02. Coordination of farm assistance programs. The credit review board is charged with responsibility in providing assistance to financially distressed eligible farmers and small businesses pursuant to the provisions of North Dakota Century Code chapter 6-09.10. The responsibility of coordination, supervision, and administration is shared with the commissioner.

1. The responsibilities and duties under North Dakota Century Code chapter 6-09.10 belonging solely to the board are as follows:
 - a. Adopting written policies governing the negotiators, mediators, and staff hired by the commissioner of agriculture pursuant to North Dakota Century Code chapter 6-09.10.
 - b. Approving interest rate buydowns as authorized by North Dakota Century Code sections 6-09.10-05, 6-09.10-07, and 6-09.10-08.
 - c. Charging reasonable fees to farmers and their creditors for any assistance provided pursuant to North Dakota Century Code chapter 6-09.10. Mediation fees must be twenty-five dollars per hour for the farmer and for each creditor of the farmer attending mediation meetings to whom the farmer owes ten thousand dollars or more. The board may waive the payment of all or a portion of mediation fees for anyone that the administrator certifies is unable to pay such fees. Fees must be ten dollars per hour per farmer for providing negotiating assistance. However, no farmer may be charged for the first ten hours of negotiating assistance provided by a negotiator. The board may waive payment of all or a portion of the fees to be paid for providing negotiating assistance for any farmer that the administrator certifies is unable to pay such fees.
 - d. Making all decisions on deferral, restructure, or waiver of payment, or other reasonable loan servicing options, for assistance provided under the provisions of North Dakota Century Code chapter 6-09.10.
 - e. Adopting rules implementing any of the provisions of North Dakota Century Code chapter 6-09.10.
2. The responsibilities and duties belonging solely to the commissioner under North Dakota Century Code chapter 6-09.10 are as follows:
 - a. Establishing and administering the program agricultural mediation service.
 - b. Appointing the administrator of the program service.

- c. Hiring staff and hiring or contracting with mediators and negotiators to mediate between eligible farmers and their creditors.
3. The commissioner and the board shall have joint responsibility and duty under North Dakota Century Code chapter 6-09.10 as follows:
- a. Implementing and administering legal and tax assistance to eligible farmers and small businesses as authorized by North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5.
 - b. Selecting appropriate cases for assistance to be made pursuant to North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5 among eligible farmers and small business persons.
 - c. Administering payment for assistance to any farmer or small business who receives assistance under North Dakota Century Code sections 6-09.10-08.1 through 6-09.10-08.5.

History: Effective January 1, 1988; amended effective December 1, 1989.
 General Authority: NDCC 6-09.10-09, 28-32-02.1
 Law Implemented: NDCC 6-09.10-03, 6-09.10-05, 6-09.10-06, 6-09.10-07, 6-09.10-08, 6-09.10-08.1, 6-09.10-08.2, 6-09.10-08.3, 6-09.10-08.4, 6-09.10-08.5, 28-32-02.1

18.5-01-01-05. Inquiries.

1. Any inquiries concerning assistance to be provided by the farm credit counseling program agricultural mediation service through its negotiators and mediators should be addressed to:

Administrator
Farm Credit Counseling Program Agricultural Mediation Service
 Department of Agriculture
 State Capitol
 600 East Boulevard Avenue
 Bismarck, North Dakota 58505

2. Any inquiries concerning the board or laws administered by the board should be addressed to:

Administrative Assistant
 Credit Review Board
 State Capitol
 600 East Boulevard Avenue
 Bismarck, North Dakota 58505

3. Any inquiries concerning legal or tax assistance to be provided under the supervision and administration of the

commissioner and the board should be addressed to the same person as in subsection 2.

History: Effective January 1, 1988; amended effective December 1, 1989.
General Authority: NDCC 28-32-02.1
Law Implemented: NDCC 28-32-02.1

18.5-01-01-06. Applicability of chapter 28-32. Both the credit review board and the department of agriculture are administrative agencies for purposes of North Dakota Century Code chapter ~~28-32~~. The farm credit counseling program is an administrative agency to the extent it exercises any authority as a subordinate of the department of agriculture which is subject to chapter ~~28-32~~. However, the administrator of the program and its negotiators have been hired as independent contractors of the department hired by the commissioner to perform functions and duties as required by North Dakota Century Code chapter ~~6-09.10~~. All rules adopted by the board are adopted pursuant to chapter ~~28-32~~, but the board and the program are not acting as an administrative agency for the purposes of complaint procedures pursuant to North Dakota Century Code sections ~~28-32-05 through 28-32-21.1~~. Repealed effective December 1, 1989.

History: Effective January ~~1~~, ~~1988~~.
General Authority: ~~NDCC 6-09.10-09, 28-32-02.1~~
Law Implemented: ~~NDCC 28-32-02.1~~

18.5-02-01-00.1. Definitions. In title 18.5, unless the context or subject matter otherwise requires:

1. "Administrator" means the administrator of the farm credit counseling program agricultural mediation service, appointed by the commissioner to administer the program service.
2. "Commissioner" means the commissioner of the state department of agriculture.
3. "Formal mediation" means the process of formal meetings between a farmer and a farmer's creditors, initiated by request of either the farmer or one or more of the farmer's creditors. Formal mediation meetings must be held with the objective of obtaining a voluntary settlement of the farmer's credit and financial problems and providing for the future conduct of financial relations between the farmer and the farmer's creditors. Settlement must be satisfactory to the farmer and the farmer's creditors and must have a goal of permitting the farmer to reside in the farm residence and to continue to produce agricultural commodities. Formal mediation must always result in issuance of a mediation report. A negotiator may be assigned to assist a farmer in formal mediation.

4. "Informal mediation" means the process of assisting a farmer to obtain settlement with the farmer's creditors. The administrator shall assign a negotiator to assist an eligible farmer in informal mediation. The negotiator will provide negotiation assistance and information to the farmer regarding farm credit problems.
5. "Initiating creditor" means a creditor that has notified the farmer of the availability of mediation.
6. "Mediator" means a person hired by or contracting with the commissioner to do formal mediation work as directed by the administrator.
7. "Negotiator" means a person hired by or contracting with the commissioner to do the negotiating work of informal and formal mediation as directed by the administrator to implement the program.
8. "Requesting creditor" means a creditor that has requested mediation.
- 4- 9. "Program" "Service" means the farm credit counseling program agricultural mediation service established by the commissioner to disseminate information to farmers concerning farm credit problems, to provide advice and counseling regarding assist in resolving farm credit problems, and to provide negotiators to negotiate with lenders creditors on behalf of the farmer, and to provide mediators to mediate between farmers and their creditors.
- 5- 10. "Staff" means a person or those persons hired by the commissioner, who are not mediators or negotiators, but who work directly under the supervision of the administrator to assist in administering the program service or to assist the credit review board in its responsibilities and duties.

History: Effective January 1, 1988; amended effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-01-02. Application process for interest subsidy. The credit review board will process applications for an interest subsidy as follows:

1. The board will, within thirty days of receipt of a completed application, advise the applicant, in writing, as to eligibility or ineligibility, including a statement as to the reasons for ineligibility.
2. If the information submitted by the applicant is inadequate for further processing, the board shall, as necessary, advise

the applicant that the program service can assist the applicant in preparation of the application.

3. Any applicant aggrieved by a denial of an interest subsidy by the board may appear in person before the board to present facts or arguments as to why assistance should be provided.

History: Effective September 17, 1985; amended effective January 1, 1988; December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-01-06. Written policies. The board shall adopt written policies governing the results sought to be achieved by the board for the mediators, negotiators, and staff hired by the commissioner to carry in carrying out the provisions of North Dakota Century Code chapter 6-09.10, and this chapter, and the program. The administrator shall implement the written policies of the board to achieve the results desired by the board as set forth in its written policies.

History: Effective January 1, 1988; amended effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03

18.5-02-02-01. Eligibility for informal mediation. The board may require that an applicant for the assistance of a negotiator in informal mediation make written application on such a form as may be required by the board. An applicant for the assistance of a negotiator must be a farmer as defined in subsection 3 of North Dakota Century Code section 6-09.10-01 and rules adopted pursuant to it To be eligible for assistance in informal mediation pursuant to North Dakota Century Code chapter 6-09.10, a farmer must be a farmer under the two-pronged test of time devoted to farming activities and annual net income from farming activities in paragraph 2 of subdivision b of subsection 15 of North Dakota Century Code section 57-02-08 (hereinafter referred to as "paragraph 2"), as further defined in this section. "Normally" means a majority of years over a period of time. However, an individual is not disqualified from being a farmer for assistance under chapter 6-09.10 if the individual engages in the farming activities listed in paragraph 2 and has been farming for six years or less, but does not otherwise meet the requirements of paragraph 2 as further defined in this section.

History: Effective January 13, 1989; amended effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-01, 6-09.10-03, 6-09.10-04, 57-02-08

18.5-02-02-02. Informal mediation proceedings.

1. Upon receipt of the application or request and a determination that the person is eligible for assistance, the administrator shall assign a negotiator to assist in the informal mediation of a settlement between the farmer and the creditors of the farmer that accomplishes the objectives of the informal mediation process.
2. The objectives of the informal mediation process are to assist the farmer in obtaining a settlement that will permit the farmer to reside in the farm residence and to continue to produce agricultural commodities, as well as to provide ~~advice, counseling,~~ negotiation assistance and information regarding farm credit problems. If the negotiator is unable to ~~mediate~~ effect a settlement of the farmer's debt or other resolution of the farmer's credit problems, the negotiator may, upon written application by the farmer to the board, work with the lender and the farmer to negotiate a purchase, repurchase, refinancing, or redemption of the farmer's home-quarter.
3. The negotiator is an authorized agent of the program service and the board who shall report to and be responsible to the administrator and the board in the informal mediation process. At the conclusion of the informal mediation, the negotiator shall report to the administrator and the board the outcome of the negotiations and any settlement that may have been accomplished.
4. Because each farmer's situation is fact specific, the negotiator shall have broad discretion to work out a financial settlement as appropriate and as approved by ~~the lender and~~ the farmer.

History: Effective January 13, 1989; amended effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-03-00.1. Eligibility for formal mediation.

1. To be eligible for assistance pursuant to North Dakota Century Code chapter 6-09.10, a farmer must be a farmer under the two-pronged test of time devoted to farming activities and annual net income from farming activities in paragraph 2 of subdivision b of subsection 15 of North Dakota Century Code section 57-02-08 (hereinafter referred to as "paragraph 2"), as further defined in this section. "Normally" means a majority of years over a period of time. However, an individual is not disqualified from being a farmer for assistance under chapter 6-09.10 if the individual engages in the farming activities listed in paragraph 2 and has been farming for six years or less, but does not otherwise meet the

requirements of paragraph 2 as further defined in this section.

2. To be eligible for formal mediation, the farmer must have a loan secured by agricultural property in default.
3. Any creditor of a farmer who is eligible for assistance pursuant to North Dakota Century Code chapter 6-09.10 and this section is eligible to request formal mediation.

History: Effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-01, 6-09.10-03, 6-09.10-04, 57-02-08

18.5-02-03-01. Request for formal mediation.

1. A farmer or a farmer's creditor may request formal mediation by filing a request for formal mediation with the administrator. The request for formal mediation must be in writing and on forms provided by the administrator. The request for formal mediation must be deemed filed on the date it is received by the administrator. A farmer or the farmer's creditor may request formal mediation proceedings even though the farmer has previously participated in informal mediation proceedings. The request for formal mediation may be filed by mailing, it by first-class mail, or by delivering to:

Administrator
Farm Credit Counseling Program Agricultural
Mediation Service
Department of Agriculture
State Capitol
600 East Boulevard Avenue
Bismarck, ND North Dakota 58505

~~The request for formal mediation must be deemed filed on the date it is received by the administrator. A farmer may request formal mediation proceedings even though the farmer has previously participated in informal mediation proceedings.~~

2. Institutions of the farm credit system may notify a farmer in default of a loan obligation of the availability of and the right to request formal mediation, if the farmer's loan is secured by agricultural property. Institutions of the farm credit system may enter into agreements with the service that require the institutions to give farmers specific notice under certain circumstances. The failure of a farmer to respond within fourteen days to a receipt of notice of the availability of and the right to request mediation shall be deemed as a waiver of mediation rights. For the purposes of this chapter, "institutions of the farm credit system" means those institutions under the supervision of the farm credit

administration required to participate in state agricultural loan and mediation programs pursuant to 7 U.S.C. 5101 et seq., Pub. L. 100-233, title V, January 6, 1988, 101 Stat. 1663.

3. Requests for formal mediation proceedings by the United States department of agriculture through its agencies such as the farmers home administration (FmHA), the commodity credit corporation (CCC) and other agencies or programs under the jurisdiction of the United States secretary of agriculture, must be made through the administrator. The failure of a farmer to respond within fourteen days to notification by the administrator of a request for mediation by the United States department of agriculture, or one of its agencies, must be deemed as a waiver of mediation rights.

History: Effective January 13, 1989; amended effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03

18.5-02-03-02. Formal mediation proceedings.

1. Upon receipt of a request for formal mediation, the administrator shall assign a mediator to conduct formal mediation proceedings. If a farmer requests assistance, the administrator shall assign a negotiator to assist the farmer in preparing for formal mediation and to negotiate on behalf of the farmer during mediation.
2. ~~The mediator~~ When a creditor requests formal mediation, the administrator shall ~~contact~~ notify the farmer of the request, by first-class mail, and obtain the farmer's signed statement consenting to formal mediation and a list of all of the creditors of the farmer.
- ~~2-~~ a. If the farmer refuses to consent to formal mediation, the ~~mediator administrator~~ shall dismiss the formal mediation and give notice of the dismissal to ~~all known creditors of the farmer~~ the creditor requesting mediation. After dismissal of the formal mediation, the creditors may proceed to enforce any debts owed by the farmer. After a farmer has refused to consent to a request for formal mediation by ~~any~~ a creditor, the farmer may not thereafter request formal mediation, with regard to that creditor, within six months following such refusal.
- ~~3-~~ b. If the farmer consents to formal mediation, ~~the mediator shall obtain from~~ the farmer shall provide to the administrator a list of all of the creditors of the farmer. Upon consent of the farmer to formal mediation, the administrator shall send a meeting notice to the farmer and all known creditors of the farmer. The notice

must set forth the time and place for an initial mediation meeting among the farmer, the creditors of the farmer, and the mediator. The initial mediation meeting must be held within ~~twenty~~ forty-five days after the filing of the request for mediation, unless the farmer or a creditor requests and receives, for good cause, an extension from the administrator.

3. When a farmer requests formal mediation, the farmer shall provide a list of all the creditors of the farmer to the administrator. The administrator shall send a meeting notice to the farmer and all known creditors of the farmer. The notice must set forth the time and place for an initial mediation meeting among the farmer, the creditors of the farmer, and the mediator. The initial meeting must be held within forty-five days after the filing of the request for mediation unless the farmer or a creditor requests and receives, for good cause, an extension from the administrator. The administrator may dismiss the mediation if the farmer fails to furnish a list of creditors within fifteen days of the request for formal mediation.
4. The mediator may call additional meetings among the farmer and all creditors or between the farmer and individual creditors, as the mediator deems appropriate, during the fifty days following the filing of the request for formal mediation. Additional meetings between some or all of the parties may be held after that time only with the express consent of the farmer and the participating creditors initial mediation meeting and before the filing of the final mediation report.
5. Any creditor required to participate in mediation pursuant to the Agricultural Credit Act of 1987 [Pub. L. 100-233; 101 Stat. 1664; 7 U.S.C. 5101 et seq.] and providing notice to the farmer shall include in the notice, at a minimum, notice of the availability of and the right to participate in formal mediation, a general description of how the mediation process works, and a request for formal mediation form. The notice must be sent to the farmer's last known address by first-class mail. A copy of the notice must be sent to the administrator.
6. Any creditor, other than a creditor required to participate in mediation pursuant to the Agricultural Credit Act of 1987 (see subsection 5) must be released from participation in mediation at any time, upon the creditor's written request. Written requests for release from participation in mediation must be addressed to the administrator.

History: Effective January 13, 1989; amended effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-03-03. Mediation report. Within fifty seventy-five days after the filing of the request for formal mediation, the mediator shall prepare and file with the administrator a mediation report summarizing the outcome of the formal mediation. If any parties consent to additional mediation meetings are held either before or after the fifty seventy-five-day period following the filing of the request for formal mediation, so that the mediator is unable to prepare and file the mediation report within the seventy-five-day period, the mediator shall prepare a supplemental and file the mediation report at within ten days of the conclusion of those additional mediation meetings.

The mediator shall file the mediation report and supplemental reports with the administrator. The administrator shall send a copy of the mediation report and supplemental reports to the farmer and the participating creditors. If mediation results in an impasse between the farmer and the farmer's creditors, the mediation report must contain a discharge from formal mediation and the creditors may proceed to enforce any debts owed by the farmer. Once the mediation report is filed with the administrator the formal mediation meetings are closed, unless a declaration of not participating in good faith is issued by the mediator, in which case mediation proceedings may be reopened pursuant to section 18.5-02-03-06. If mediation proceedings are reopened, the mediator may file an amended mediation report, if necessary. Otherwise, formal mediation by the same participants may only begin again pursuant to a new request for mediation.

History: Effective January 13, 1989; amended effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-03-04. Duties of the mediator. During the mediation process, the mediator shall:

1. Listen to the farmer and the creditors desiring to be heard.
2. Attempt to mediate between the farmer and the creditors.
3. Advise the farmer and the creditors as to the existence of available assistance programs.
4. Encourage the parties to adjust, refinance, or provide for payment of the debts.
5. Advise, counsel, and assist the farmer and the creditors in attempting to arrive at an agreement for the future conduct of financial relations among them.
6. State, at the beginning of the mediation process, that the mediator's role is that of a facilitator and not a negotiator for either party.

History: Effective January 13, 1989; amended effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-03-06. Good faith participation. All participants in mediation shall participate and act in good faith. Because mediation is an attempt to reach a voluntary settlement, the fact that the parties cannot reach agreement to resolve the farmer's farm credit problems is not, standing alone, evidence of bad faith. Any party to formal mediation may request a declaration from the mediator that another party is not participating in good faith. A mediator shall issue ~~such~~ a declaration, including the reasons for the declaration, when the mediator determines that the party against whom the declaration is sought:

1. Has failed to attend any meeting called by the mediator without good cause;
2. Has, after January ~~10~~ 13, 1989, and before completion of formal mediation proceedings, taken steps to initiate legal action against a participating party or to enforce the obligation of a party, including the sending of any notices required to be sent as a necessary prerequisite for commencing legal action, foreclosure, or repossession;
3. Has failed to produce, at the request of the mediator, within a reasonable time after requested, any relevant information within the party's possession;
4. Has failed to respond within ~~three~~ ten business days to any proposal made by the farmer or any creditor; or
5. Has engaged in other behavior that evidences an intention not to honestly and sincerely participate in the effort to resolve the farmer's credit problems.

No declaration from a mediator that a party is not participating in good faith may be based upon any actions of the party prior to January ~~10~~ 13, 1989. If a mediator determines that a party is not participating in good faith, and affidavit to that effect may be filed by the mediator with the administrator indicating the reasons for the determination. If the mediator finds that any party is not participating in good faith, the mediator may terminate the mediation proceedings and issue the mediation report or continue or reopen the mediation proceedings for up to an additional sixty days to attempt to find an acceptable solution to the farmer's credit problems.

History: Effective January 13, 1989; amended effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

TITLE 30
Game and Fish Department

SEPTEMBER 1989

30-03-02-04. Species authorized. Species of fish which may be authorized by the game and fish commissioner for raising or holding in a licensed private fish hatchery shall be limited to trout, largemouth bass, walleye, northern pike, crappie, and bluegills.

History: Amended effective September 1, 1989.

General Authority: NDCC 20.1-06-12

Law Implemented: NDCC 20.1-06-12

30-04-03-01. License required. A license is required for any person to act as a hunting or fishing guide or outfitter. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

History: Amended effective April 1, 1986; September 1, 1989.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

30-04-03-12. General penalty. Any person violating a provision of this chapter for which a penalty is not specifically provided is guilty of a noncriminal offense and shall pay a twenty-five dollar fee.

History: Effective September 1, 1989.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

30-04-05-03. Combined licenses. The following licenses or permits are combined into one stamp each: resident big game (deer gun only) and permit to hunt deer in certain restricted areas; nonresident big game (deer gun only) and permit to hunt deer in certain restricted

areas; resident ~~small~~ general game and habitat restoration stamp; and nonresident ~~small~~ general game and habitat restoration stamp.

History: Effective March 1, 1983; amended effective September 1, 1989.

General Authority: NDCC 20.1-02-04

Law Implemented: NDCC 20.1-03-12, 20.1-03-12.1

TITLE 33
Health and Consolidated Laboratories, Department of

AUGUST 1989

33-07-03.1-01. General provisions.

1. Institutions covered by the Medical Hospital Licensure Act. The following types of institutions have been so designated for the purpose of rules and are deemed to come within the provisions of North Dakota Century Code section 23-16-01 which provides for licensure of any institution which maintains and operates organized facilities for the diagnosis, treatment, or care of two or more nonrelated persons suffering from illness, injury, or deformity or where obstetrical or other care is rendered over a period exceeding twenty-four hours.
 - a. Hospitals, including general, medical, and specialized hospitals.
 - b. Long-term care facilities.
 - (1) Skilled nursing facilities.
 - (2) Intermediate care facilities.
 - c. Infirmaries.
 - d. Maternity homes.
 - e. Outpatient facilities, including ambulatory surgical centers (excluding physicians' clinics).
2. Institutions not covered by the Medical Hospital Licensure Act. The following types of institutions which provide some medical or nursing service are deemed not to come within the meaning of the Medical Hospital Licensure Act, North Dakota Century Code chapter 23-16.

- a. Any institution which is regularly licensed by the department of human services such as homes for unmarried mothers and homes providing custodial care for the aged.
 - b. Federal and state institutions. (In the case of state institutions, the primary purpose of which is the provision of medical care, the department has the responsibility for inspection on the same basis as those made of institutions which are covered by North Dakota Century Code chapter 23-16. Upon the findings of such inspections, recommendations will be formulated by the department.)
 - c. Chiropractic hospitals. (These hospitals are licensed under the provisions of North Dakota Century Code chapter 23-17.)
 - d. Homes in which the only persons receiving nursing care are those related to the householder by blood or marriage.
 - e. Homes in which only one person receives care at any one time except maternity homes which receive more than one patient in six months. Such maternity homes are deemed to come under North Dakota Century Code chapter 23-16 and are required to be licensed.
 - f. First aid stations and emergency care facilities which do not provide accommodations for hospitalization as herein defined.
3. Definitions. The following terms are defined for purposes of North Dakota Century Code chapter 23-16.
- a. "Ambulatory surgical center" means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization.
 - b. "Bed capacity" means:
 - (1) All spaces designed for resident bedrooms even if currently closed or assigned to easily convertible nonresident uses such as storage or staff quarters.
 - (2) Space in areas originally designed as solaria, waiting rooms, offices, conference rooms, and classrooms which have necessary fixed equipment (nurses' call, lighting, etc.) and are accessible to a nurses' station exclusively staffed for resident care.
 - (3) Space under construction designed as resident bedrooms or designed to be readily convertible to

resident bedrooms if planned for immediate completion (excludes unfinished shelled-in floors).

Bed capacity is determined by the floor area (square feet) in the following manner:

- (4) In measuring the floor area of spaces usable as resident bedrooms for the purpose of determining bed capacity, only the net usable space in the room may be considered. Space in toilet rooms, washrooms, closets, vestibules, and corridors may not be counted as part of the net usable space (square feet).
 - (5) Resident bedrooms must have adequate floor space to conveniently house necessary furniture and equipment, to provide for efficient resident care, and to provide for convenient movement of stretchers, and for the transfer of residents to and from beds. Adequate floor space is defined as:
 - (a) In single resident rooms the least dimension free of fixed obstructions must not be less than ten feet [3.05 meters], and the floor area must not be less than one hundred twenty-five square feet [11.61 square meters], nor more than one hundred forty-five square feet [13.47 square meters].
 - (b) Resident rooms having two or more beds must have as a minimum floor area, eighty square feet [7.43 square meters] of space free of fixed obstructions per bed. The least dimension of a rectangular multiple resident room must not be less than eleven feet six inches [3.50 meters] free of fixed obstructions, except in especially arranged rectangular rooms such as, for example, in the toe-to-toe arrangement where the minimum clear width must not be less than ten feet [3.05 meters] and the minimum clear length must not be less than seventeen feet six inches [5.33 meters] free of fixed obstructions.
 - (c) In the case of other than rectangular shaped rooms, there must be adherence to the principles of specified minimum dimensions and areas per bed in rectangular rooms.
- c. "Department" means the state department of health and consolidated laboratories.
 - d. "Emanating services" means services which originate out of and are provided out of a licensed skilled nursing facility or intermediate care facility to facilities not

subject to licensure by the department for which the governing body of a licensed skilled nursing facility or intermediate care facility has responsibility.

- e. "General hospital" means an establishment with organized medical staffs; with permanent facilities that include inpatient beds; and with medical services including physician services and continuous nursing services to provide diagnosis and treatment for a variety of medical conditions, both surgical and nonsurgical, and services including rehabilitation services.
- f. "Governing body" means the individual or group in whom the ultimate authority and legal responsibility is vested for the conduct of the long-term care facility.
- g. "Hospital" means an institution, the principal activity or business of which is the reception of a person for diagnosis, care, and treatment of human illness through the maintenance and operation of organized facilities therefor.
- h. "Hospitalization" means the reception and care of any person for a continuous period longer than twenty-four hours, for the purpose of consultations, diagnosis, or treatment including rehabilitation bearing on the physical and mental health of such person.
- i. "Infirmery" means those special inpatient facilities which are established in connection with an educational or penal institution, or an industrial or commercial establishment for persons who during their attendance, confinement, or employment in such institution or establishment, require nursing service or physician treatment. Applicable requirements of North Dakota Administrative Code chapter 33-07-01 apply.
- j. "Level of care" means the classification of a resident in accordance with the resident's medical and nursing needs generally expressed as a skilled, intermediate, or basic level of care dependent upon the degree of care necessitated to adequately care for the needs of the resident.
- k. "Licensee" means the governing body of the hospital, related institution, skilled nursing facility, or intermediate care facility.
- l. "Long-term care facilities" are the following:
 - (1) "Intermediate care facility" means an institution in which nursing care is rendered for compensation at any one time to two or more persons not related to

the licensee by blood or marriage. An intermediate care facility shall serve persons suffering from prolonged physical or mental illness or defect or persons recovering from some injury or disease requiring less than twenty-four hours per day of nursing service provided by licensed personnel. Care given in an intermediate care facility must include procedures commonly employed in waiting on the sick, such as administration of medication, preparation of special diets, giving of bedside care, applications of dressings and bandages, and carrying out treatments prescribed by a licensed physician. An intermediate care facility may not provide for any higher level of care.

(2) "Skilled nursing facility" means an institution in which nursing care is rendered for compensation at any one time to two or more persons not related to the licensee by blood or marriage. A skilled nursing facility must serve persons suffering from a prolonged physical or mental illness or defect or persons recovering from some injury or disease and requiring twenty-four-hour nursing services provided by licensed personnel. Care given in a skilled nursing facility must provide all of the procedures commonly employed in waiting on the sick, such as administration of medicines, preparation of special diets, giving of bedside care, applications of dressings and bandages, and carrying out of treatments prescribed by a licensed physician. A skilled nursing facility may not provide for any higher level of care.

(3) If a facility is established for the provisions of custodial and personal care, but it develops that two or more persons usually served by such institutions require nursing care, such institutions are deemed to come within the meaning of North Dakota Century Code chapter 23-16 and such facility must conform to this chapter and chapter 33-07-04.1 or the institution shall transfer such patients to facilities properly staffed and equipped to care for such persons.

m. "Maternity home" means an institution of private dwelling type in which care for maternity patients is rendered. Any such home which receives more than one maternity patient (exclusive of those related to the licensee by blood or marriage) within a period of six months is deemed to be a maternity home. A maternity home which regularly provides accommodations for two or more patients at any one time must be classified as a maternity hospital and is required to meet the requirements for a specialized

hospital. Applicable requirements of chapter 33-07-01 apply.

n. "Medical hospital" means an establishment with organized medical staff; with permanent facilities that include inpatient beds; and with medical services, including physician services and continuous nursing services, to provide diagnosis; and to provide nonsurgical treatment.

o. "Medical staff" means a formal organization of physicians (and dentists, where appropriate) with the delegated authority and responsibility to maintain proper standards of medical care and to plan for continued improvement of that care. This does not preclude the establishment of other medical staff sections.

p. "Mental health professional" means:

(1) A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.

(2) A social worker with a master's degree in social work from an accredited program.

(3) A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.

(4) A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined in subsection 3.

(5) A licensed addiction counselor.

~~p.~~ q. "Nursing services" means those services pertaining to the curative, restorative, or preventive aspects of nursing care that are performed or supervised by a registered professional nurse at the direction of a physician.

~~q.~~ r. "Outpatient facility" (including ambulatory surgical centers - excluding physician's clinic) means a facility located in or apart from a hospital, providing community service for the diagnosis or diagnosis and treatment of ambulatory patients in need of physical or mental care:

(1) Which is operated in connection with a hospital;

(2) In which patient care is under the professional supervision of licensed physicians in various medical specialties in the state or, in the case of dental diagnosis or treatment, under the professional

supervision of persons licensed to practice dentistry in the state; or

- (3) Which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which makes provision for its patients to receive a reasonably full range of diagnostic and treatment services.

4. Application for long-term care facility license general provisions.

- a. No person or entity may establish, maintain, or operate a long-term care facility without first having obtained a license. Any person or entity who owns or leases a long-term care facility and desires to maintain or operate it shall apply to the department for a license in the form prescribed and shall obtain a license before accepting residents for care or treatment.
- b. Each long-term care facility applying for a license must be designated by a distinctive name consistent with the services offered to avoid public confusion or misrepresentation. The name may not be changed without department approval.
- c. In the case of a hospital, related institution, skilled nursing facility, or intermediate care facility, where two or more buildings are used in the care of residents, a separate license is required for each building. Separate licenses are required even though the buildings are operated under the same management.
- d. Every license application must be notarized and signed by an authorized corporate officer, general partner, or sole proprietor of the long-term care facility, as appropriate.
- e. Upon receipt of a completed license application, the department shall review the long-term care facility to determine compliance with this chapter and chapter 33-07-04.1, including onsite inspections, as appropriate.
- f. The license must be displayed in a conspicuous place. Each license is valid only in the hands of the person to whom it is issued and is not subject to sale, assignment or other transfer, voluntary or involuntary, nor is a license valid for any premises other than those for which originally issued.
- g. The department may require submission of periodic reports including, but not limited to, staffing reports, census data, statistical information, and such business records

as the department may reasonably require for the performance of its licensure functions.

- h. The holder of each license issued by the department shall surrender the license immediately upon suspension, revocation, refusal to renew, or discontinuance of the operation of the long-term care facility.
 - i. The department may summarily suspend a license pending proceedings for revocation of or refusal to renew the license in cases of deliberate or willful violation, or where the public health, safety, or welfare imperatively requires emergency action.
 - j. The department and any duly authorized representative thereof have the right to enter upon and into the premises of any long-term care facility in order to determine the state of compliance with North Dakota Century Code chapter 23-16 and this chapter and chapter 33-07-04.1 and initially identify themselves to the person in charge of the long-term care facility at the time.
5. Application for an initial long-term care facility license. An application for an initial license must include the following information:
- a. Bylaws and articles of incorporation or partnership agreement, as appropriate, must accompany the initial application. Changes must be reported to the department within thirty days of occurrence.
 - b. If a partnership, the name, address, and ownership share (expressed as a percentage), and legal status (general or limited) of each partner.
 - c. If a corporation, the address, and ownership share of each shareholder who directly or indirectly owns or controls five percent or more of the shares of the corporation, and the name, address, and corporate title of each officer and director. In addition, copies of all documents of incorporation filed with the North Dakota secretary of state must be filed with the department.
 - d. If a sole proprietorship or any form of business entity, the name and address, title, and ownership share (expressed as a percentage) of each person with a financial interest therein, and the name, address, and title of every person who controls, directs, or operates the business entity.
 - e. If the applicant is the lessee of the long-term care facility, it shall furnish the information required for an

initial license for itself and the lessor. A copy of the relevant lease must be submitted to the department.

- f. The applicant's legal name and other names under which it does business.
- g. Each applicant shall furnish to the department a signed and notarized statement at the time of initial application, describing and dating every proceeding in the United States within five years of the date of application, in which the applicant was involved, the result of which was a limitation upon or a suspension, revocation, or refusal to grant or renew a long-term care facility license, certification for medicaid or medicare, or contract for participation in medicaid or medicare.
- h. Each applicant shall furnish a signed and notarized statement to the department at the time of initial application, describing every criminal proceeding within five years of the date of the application in which the licensee or any of its shareholders owning an interest of five percent or more, officers, directors, partners, or other controlling or managing persons, has been convicted, or nolo contendere plea accepted, of a criminal offense related to the operation, management, or ownership of a long-term care facility.
- i. Each applicant shall furnish to the department the information required for an initial license with respect to any management company with which it contracts for management services for the long-term care facility.
- j. The department may not approve an application for an initial license unless:
 - (1) The application and all required attachments and statements submitted by the applicant meet the requirements of this chapter and chapter 33-07-04.1.
 - (2) The department has conducted an inspection or investigation of the long-term care facility to determine compliance with this chapter and chapter 33-07-04.1.
 - (3) The department has conducted an investigation of the fitness of the applicant. In the determination of this fitness, the department shall consider the following:
 - (a) Whether the applicant has legal capacity demonstrated by such documents as articles of incorporation to provide the services for which the license is sought.

- (b) Whether financial resources and sources of revenue for the specific long-term care facility of the applicant appear adequate to provide staff, services, and the physical environment sufficient to comply with North Dakota Century Code chapter 23-16 and this chapter and chapter 33-07-04.1.
 - (c) Whether a substantially consistent and adequate level of care, as measured by compliance with this chapter and chapter 33-07-04.1 and other pertinent evidence, is being or was rendered by the applicant during the five-year period prior to the date of application in each institution in which the applicant exercised ownership, management, or operational functions.
- 6. Application for license renewal. The licensee shall submit a completed application to the department. The department may require reports including, but not limited to, staffing reports, census data, statistical information, and such business records as the department may reasonably require for the performance of its licensure functions.
- 7. Provisional license.
 - a. If the long-term care facility fails to conform to the requirements of North Dakota Century Code chapter 23-16 and this chapter and chapter 33-07-04.1, the department may refuse to issue a license, but may issue a provisional license to allow the long-term care facility to comply with licensing requirements, if the licensee makes a substantial good faith attempt to comply with such requirements and requires time to effect compliance.
 - b. The provisional license is valid for ninety days.
 - c. The provisional license may be renewed once, if the licensee demonstrates to the department that it has made further substantial progress towards compliance, and can effect compliance within the following ninety days.
 - d. Before determining whether to issue a permanent license to a provisionally licensed long-term care facility, the department shall conduct a survey or such other investigation as it deems necessary to determine that the long-term care facility meets the requirements for licensure.
- 8. Change or modification of license. The holder of a license shall notify the department in writing thirty days in advance of any of the following changes:

- a. In the case of a partnership, transfer of ownership includes dissolution of the partnership and conversion thereof into any other entity or the removal, addition, or substitution of an individual or other entity for a general partner.
- b. Transfer of ownership of a sole proprietorship (any business owned by a single individual) includes transfer of title and property to another person.
- c. Transfer of ownership of a corporation does not, in itself, include transfer of corporate stock or merger of one or more corporations with the licensee surviving. Transfer of ownership of a corporation includes consolidation of two or more corporations resulting in the creation of a new corporate entity and formation of a corporation from a partnership or a sole proprietorship.
- d. Transfer of operating rights of the licensee includes a lease of the long-term care facility where the lessor retains no control of the operation or management of the long-term care facility and where the lessor is paid by a contract which specifies the amount of the payment.
- e. Change in bed capacity.
- f. Change in levels of long-term care services.
- g. Change in name of long-term care facility.
- h. Change of administrator.

History: Effective December 1, 1986; amended effective August 1, 1989.
 General Authority: NDCC 23-01-03, 28-32-02
 Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-21. Psychological and psychiatric services. The governing board shall assure that psychological and psychiatric services are provided to residents on the basis of resident need.

- 1. The long-term care facility shall have procedures for the delivery of services to address the psychological and psychiatric needs of residents.
- 2. The long-term care facility shall provide for an initial and ongoing assessment to include resident information and staff observations of the resident's psychological and psychiatric needs. The assessment must be conducted by competent, qualified, licensed staff or consultant who is properly trained in screening residents for cognitive and emotional problems and who has been designated by the facility to conduct the assessment. The initial assessment must be in the

resident's medical record within seven days of admission. Residents assessed as requiring the involvement of a professional qualified to provide psychological or psychiatric services must be referred within fourteen days of any assessment. Ongoing assessments must be provided as the resident's needs require, but not less frequently than quarterly.

3. All referrals by employees through the attending staff of the long-term care facility to agencies or individuals qualified and licensed to provide psychological and psychiatric services must be documented in the resident's medical record.
4. If the long-term care facility determines that psychological and psychiatric services will be provided through a purchase of service arrangement, the contract must include:
 - a. Identification and qualifications of the individuals who are responsible for the provision of the psychological and psychiatric services.
 - b. The type of service and description of how the service will be provided.
 - c. Provision for the exchange of appropriate information between the long-term care facility and contracted service which will allow for consistency and continuity in treatment of the resident.
5. A minimum of an annual inservice and continuing education on the psychological and psychiatric care of residents must be provided to staff by a licensed mental health professional, within the scope of a mental health professional's licensure, or psychiatrist. Additional staff training and education must be provided if the needs of the resident population or staff needs indicate a requirement for more training or education.
6. Orientation programs for newly employed staff must include psychiatric and psychological training relevant to resident needs.

History: Effective August 1, 1989.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01

33-34-01-02. Labeling specifications.

1. Road Posted octane rating. The road octane rating of a gasoline or gasohol is the mathematical average of the octane as determined by the ASTM Research Method and the octane as determined by the ASTM Motor Method.

- a. The road posted octane rating must appear on the dispenser's front panel in a type not less than one-inch [2.54 centimeters] high.
 - b. Only gasoline or gasohol with a road posted octane rating greater than or equal to ninety-two may be labeled "premium".
 - c. Only gasoline or gasohol with a road posted octane rating greater than or equal to ninety may be labeled "super".
2. Alcohol-blended gasolines.
- a. All gasoline or gasohol sold or offered for sale containing ethanol, methanol or cosolvent alcohol, or any combination thereof, shall be labeled with the conventional name or names of the alcohol contained in the gasoline or gasohol if the gasoline or gasohol consists of one percent or more by volume of any alcohol or combinations of alcohols. The label must be on any price advertising and the dispenser's front panel in a position that is clear and conspicuous from the driver's position.
 - b. Maximum percentage of methanol and cosolvent alcohol must both be conspicuously displayed or labeled if the product contains three percent or more by volume of methanol.
 - c. No person may sell gasoline or gasohol in any manner, including coloring, which shall deceive, tend to deceive, or has the effect of deceiving the purchaser as to grade or type.
 - d. Suppliers of alcohol-blended gasoline to retail service stations or to other resuppliers must provide to the retailer or other reseller an invoice or delivery ticket indicating to within one percentage point the specific content by volume of any alcohol contained in the gasoline or gasohol if the gasoline or gasohol consists of one percent or more by volume of any alcohol or combinations of alcohols. This information must be made readily available to the consumer of an alcohol-blended gasoline.
3. Gasoline grade designations. All gasolines or alcohol-blended gasolines sold or offered for sale must bear on the dispenser's front panel and on any price advertising the appropriate leaded or lead free grade designation. This label must be posted in a position that is clear and conspicuous from the driver's position.

History: Effective August 1, 1988; amended effective August 1, 1989.
General Authority: NDCC 19-01-02, 19-10-02, 23-01-03(3)
Law Implemented: NDCC 19-10-01(4), 19-10-03.1, 19-10-04

33-34-01-03. Kerosene specifications. Kerosene shall meet the specifications of this section.

1. Kerosene shall be a petroleum fraction, shall be free from water, additives, foreign and or suspended matter, and shall be suitable for use as an illuminating oil.
2. Burning test, hours (minimum)* 16
3. Volatility:
 Flash point, degrees
 Fahrenheit (minimum) ~~115~~ 100
Distillation, degrees Fahrenheit:
10 percent recovered (maximum) 401
- ~~4.~~ End point, degrees
 Fahrenheit (maximum) 572
- ~~5.~~ 4. Sulfur, percent (maximum) ~~0.13~~
 No. 1-K 0.04
 No. 2-K 0.30
- ~~6.~~ 5. ~~Color, Saybolt number,~~
 (minimum) ~~21~~
 Color, Saybolt number,
 (minimum) (after heating 16 hours) 16
- ~~7.~~ 6. Fluidity:
 Cloud point, degrees
 Fahrenheit (maximum) 5
 Freezing point, degrees Fahrenheit -22
Viscosity at 40 degrees Celsius 1.0 min/1.9 max

*After the first weighing, the rate of burning shall ~~not~~ be greater than ~~twenty nine milliliters per hour with the liquefied petroleum gas burner or forty five milliliters per hour with the American society for testing and materials 27 burner.~~ 18 to 26 g/h. with the Institute of Petroleum (IP) burner. At the end of test the chimney shall be clear or only slightly clouded; the wick shall have no appreciable hard incrustation; ~~the flame shall not be smoky and shall be practically as large at the end of test as when the final adjustment of the wick was made;~~ at the end of test, the width of the flame may not vary by more than six millimeters, and the height of the flame may not have lowered by more than five millimeters from the respective measurements recorded at the start of the test.

History: Effective August 1, 1988; amended effective August 1, 1989.
General Authority: NDCC 19-10-10, 23-01-03(3)
Law Implemented: NDCC 19-10-10

NORTH DAKOTA GASOLINE SPECIFICATIONS

TEST	MOTOR			
	a	b	c	d
Water and Sediment.	None	None	None	None
Color Saybolt, min				
Color, Dye.	e	e	e	e
Dye Content				
Permissible blue dye (f)				
max. mg/gal				
Permissible yellow dye (g)				
max. mg/gal				
Permissible red dye (h)				
max. mg/gal				
Antiknock Compound (j) g/gal. max . . .	i	i	i	i
Distillation Test				
10 percent Evap. degrees F. max . . .	122	131	140	149 <u>140</u>
50 percent Evap. degrees F. min . . .	170	170	170	170
50 percent Evap. degrees F. max . . .	230	235	240	245 <u>240</u>
90 percent Evap. degrees F. min . . .	---	---	---	---
90 percent Evap. degrees F. max . . .	365	365	365	374 <u>365</u>
End Point degrees F. max.	437	437	437	437
Sum of 10 and 50 degrees F				
Evap. Points degrees F. min	---	---	---	---
Distillation Recovery percent min . .	---	---	---	---
Residue percent max	2	2	2	2
Loss percent max	---	---	---	---
Vapor Pressure (Reid) lbs. max.	15.0	13.5	11.5	10.0 <u>10.5</u>
Vapor/Liquid Ratio				
Minimum Test Temp. degrees F.	105	116	124	133 <u>124</u>
V/L max	20	20	20	20
Corrosion (copper strip) max.	No. 1	No. 1	No. 1	No. 1
Sulphur Sulfur percent max				
(lead free gasolines)	0.1	0.1	0.1	0.1
Sulphur Sulfur percent max				
(lead gasolines).	0.15	0.15	0.15	0.15
Gum, mgs/100 ml max	5	5	5	5

Potential Gum (m) (5 hr. aging gum)				
max. mg/per 100 ml	---	---	---	---
Freezing Point degrees F. max	---	---	---	---
Net Heat of Combustion				
min. BTU/lb	---	---	---	---
Acidity of Distillation Residue	---	---	---	---
Visible Lead Precipitate (m)				
max. mg/1000 ml	---	---	---	---
Water Reaction	---	---	---	---
Permissible antioxidants degrees				
max. lb/1000 bbl.	---	---	---	---
Knock Value				
Motor and Research Octane No., min. . .	e	e	e	e
Octane Number Lean Rating, min. . . .	---	---	---	---
Octane Number Rich Rating, min. . . .	---	---	---	---
Oxidation stability, Minutes min . . .	---	---	---	---

NORTH DAKOTA GASOLINE SPECIFICATIONS (Continued)

TEST	STOVE AND LIGHT	AVIATION		
		80	100	100LL
Water and Sediment.	None			
Color Saybolt, min.	15			
Color, Dye.	None	Red(k)	Green	Blue
Dye Content				
Permissible blue dye (f)				
max. mg/gal		0.5	4.7	5.7
Permissible yellow dye (g)				
max. mg/gal		None	5.9	None
Permissible red dye (h)				
max. mg/gal		8.65	None	None
Antiknock Compound (j) g/gal. <u>ml/gal.</u> max . . .	Trace	0.5(j)	4.0	2.0
Distillation Test				
10 percent Evap. degrees F. max . . .	158	167	167	167
50 percent Evap. degrees F. min . . .	---	---	---	---
50 percent Evap. degrees F. max . . .	266	221	221	221
90 percent Evap. degrees F. min . . .	---	---	---	---
90 percent Evap. degrees F. max . . .	365	275	275	275
End Point degrees F. max.	---	338	338	338
Sum of 10 and 50 degrees F				
Evap. Points degrees F. min	---	307	307	307
Distillation Recovery percent min . .	---	97	97	97
Residue percent max	2	1.5	1.5	1.5
Loss percent max.	---	1.5	1.5	1.5
Vapor Pressure (Reid) lbs. max.	10	7.0	7.0	7.0
<u>min.</u>	---	<u>5.5</u>	<u>5.5</u>	<u>5.5</u>
Vapor/Liquid Ratio				
Minimum Test Temp. degrees F.	---	---	---	---
V/L max	---	---	---	---
Corrosion (copper strip) max.	None	No. 1	No. 1	No. 1
Sulphur percent max				
(lead free gasolines)	0.1			
Sulphur Sulfur percent max				
(lead gasolines).		0.05	0.05	0.05

Gum, mg/100 ml <u>mg/100 ml</u> max	4	---	---	---
Potential Gum (m) (5 hr. aging gum) max. mg/per 100 ml.	---	6	6	6
Freezing Point degrees F. max	---	-72	-72	-72
Net Heat of Combustion min. BTU/lb	---	18.720	18.720	18.720
Acidity of Distillation Residue <u>Not</u>	---	<u>Not</u> Acid	<u>Not</u> Acid	Acid
Visible Lead Precipitate (n) max. mg/1000 <u>mg/100 ml</u>	---	---	3	3
Water Reaction.	---	Volume change not to exceed (+)(-) 2 ml		
Permissible antioxidants <u>degrees (o)</u> max. lb/1000 bbl.	---	4.2	4.2	4.2
Knock Value				
Motor and Research Octane No., min.	---	---	---	---
Octane Number Lean Rating, min.	---	80	100	<u>Iso + 47</u>
Octane Number Rich Rating, min.	---	87	<u>Iso + 1.28</u>	<u>Iso + 2.0</u>
<u>Performance number, min</u>	---	---	<u>130</u>	<u>130</u>
Oxidation stability, Minutes min.	480	---	---	---

FOOTNOTES TO NORTH DAKOTA GASOLINE SPECIFICATIONS

- a. Applies to gasoline sold during the months of January, February, March, November, and December.
- b. Applies to gasoline sold during the months of March, April, October, and November.
- c. Applies to gasoline sold during the months of April, May, June, September, and October.
- d. Applies to gasoline sold during the months of May, June, July, August, and September.
- e. The minimum octane for premium gasoline shall be 92 as determined by the sum of the Research Method plus the Motor Method all divided by two ((R+M)/2). The minimum octane for

super gasoline shall be 90 as determined by the sum of the Research Method plus the Motor Method all divided by two $((R+M)/2)$. The minimum octane for leaded regular gasoline shall be 88 as determined by the sum of the Research Method plus the Motor Method all divided by two $((R+M)/2)$. The minimum octane for unleaded regular gasoline shall be 87 as determined by the sum of the Research Method plus the Motor Method all divided by two $((R+M)/2)$. No person shall sell gasoline in any manner, including coloring, which shall deceive, tend to deceive, or has the effect of deceiving the purchaser as to grade or type.

- f. The only blue dye which shall be present in the finished gasoline shall be essentially 1, 4-dialkylaminoantraquinone.
- g. The only yellow dye which shall be present in the finished gasoline shall be essentially p-diethylaminoazobenzene (Color Index No. 11020).
- h. The only red dye which shall be present in the finished gasoline shall be essentially methyl derivatives of azobenzene-4-azo-2-naphthol (methyl derivatives of Color Index No. 26105) or alkyl derivatives of azobenzene-4-azo-2-naphthol.
- i. The lead content of gasoline shall be in accordance with environmental protection agency requirements.
- j. The tetraethyllead shall be added in the form of an aviation antiknock mixture containing not less than 61 percent by weight of tetraethyllead and sufficient ethylene dibromide to provide two bromine atoms per atom of lead. The balance shall contain no added ingredients other than kerosene, and approved inhibitors, and blue dye, as specified, herein.
- k. If mutually agreed upon between purchaser and supplier, Grade 80 may be required to be free from tetraethyllead. In such case the fuel shall not contain any dye and color shall not be darker than +20 Saybolt.
- l. Vapor pressure shall follow the seasonal requirements for regular and premium gasoline.
- m. If mutually agreed upon between purchaser and supplier, aviation gasoline may be required to meet a sixteen-hour aging gum test instead of the five-hour aging gum test. In some cases the gum content shall not exceed 10 mg per 100 ml and the visible lead precipitate shall not exceed 4 mg per 100 ml. In such fuel the permissible antioxidants shall not exceed 8.4 lb per 1000 bbl (42 gallons).
- n. The visible lead precipitate requirement applies only to leaded fuels.

o. Permissible antioxidants are as follows:

N,N'-diisopropyl-para-phenylenediamine
N,N' di-secondary-butyl-para-phenylenediamine
2,4-dimethyl-6-tertiary-butylphenol
2,6-ditertiary-butyl-4-methylphenol
2,6-ditertiary butylphenol

Mixed tertiary butylphenols, composition:

75 percent 2,6-ditertiary butylphenol - 10 to 15 percent 2,4,6-tritertiary butylphenol 10 to 15 percent 0-tertiary butylphenol - 75 percent min 2,4-dimethyl-6-tertiary butylphenol, and 28 percent max monomethyl and dimethyl tertiary butylphenols 75% minimum 2,6 ditertiary butylphenol plus 25% max. tertiary and tritertiary butylphenols.

NORTH DAKOTA HEATING OIL SPECIFICATIONS.

	No. 1	No. 2	No. 4 (light)	No. 4	No. 5 (light)	No. 5 (heavy)	No. 6
	A distillate oil intended for vaporizing pot-type burners and other burners requiring this grade of fuel	A distillate oil for general purpose heating for use in burners not requiring No. 1 fuel oil	Preheating not usually required for handling or burning	Preheating not usually required for handling or burning	Preheating may be required depending on climate and equipment	Preheating may be required for burning end, in cold climates may be required for handling	Preheating required for handling and burning
Corrosion (Copper Strip) Maximum	No. 3	No. 3					
Flash Point (Tag closed tester) °F Minimum	100	100	100	130	130	130	140
Pour Point °F Maximum	0	20-b	20	20			
Water and sediment percent maximum	0.05	0.05	0.50	0.50	1.00	1.00	2.00
Carbon Residue (On 105 Residue) percent maximum	0.15	0.35	0.05	0.10	0.15	0.15	
Ash percent maximum							
Distillation Test:							
105 Recovered °F maximum	420	c					
905 Recovered °F maximum	350	640					
905 Recovered °F minimum		340 d					
Viscosity at 100°F seconds							
Saybolt Universal, minimum		32.6	32.6	45	3125	3300	3900
Maximum		37.8	45	125	300	900	9000
Viscosity at 122°F Saybolt Furol							
Minimum							
Maximum							
Viscosity at 100°F Kinematic Centistokes							
Minimum	1.4	2.0 d	2.0	5.8	76.4	65	745
Maximum	2.2	3.6	3.6	26.4			300
Viscosity at 104°F Kinematic Centistokes							
Minimum							
Maximum							
Gravity °API Minimum	35	30	30 min				97
Sulphur, percent maximum	0.5	0.5					638

a. It is the intent of these classifications that failure to meet any requirement of a given grade does not automatically place an oil in the next lower grade unless in fact it meets all requirements of the lower grade.

b. Shall not exceed 0° whenever required by conditions of storage or use.

c. The 105 point shall be 460°F, maximum for use in other than atomizing burners.

d. The 105 point less than 0°F, is specified, the minimum viscosity shall be 1,000, 132.0 and minimum 905 point shall be tested.

NORTH DAKOTA DIESEL FUEL SPECIFICATION

Grade of Diesel Fuel Oil	Flash Point deg Fahr	Cloud Point, deg Fahr	Water and Sedi- ment, percent by volume	Carbon Residue on 10% Residuum, percent	Ash percent by weight	Distillation Temperatures Degrees Fahrenheit		Viscosity at 100°F, Kinematic, centistoke (or Saybolt Universal, sec.)		Sulphur percent by weight	Copper Strip Corrosion	Cetane Number c		
						90 percent Point		Min.	Max.				Max.	Max.
						Min.	Max.							
No. 1-D A volatile distillate fuel oil for engines in service requiring frequent speed and load changes.	100	a	0.05	0.15	0.01	----	550	1.3	2.4 (34.4)	0.50	No. 3	40d		
No. 2-D A distillate fuel oil of lower volatility for engines in industrial and heavy mobile service.	125	a	0.05	0.35	0.01	540b	640	1.9b (32.6)	4.1 (40.1)	0.50	No. 3	40d		
No. 4-D A fuel oil for low and medium speed engines.	130	a	0.50	---	0.10	----	----	5.5 (45)	24.0 (125)	2.0	--	30d		

a. It is unrealistic to specify low temperature properties that will ensure satisfactory operation on a broad basis. Satisfactory operation should be achieved in most cases if the cloud point (or wax appearance point) is specified at 6°C above the tenth percentile minimum ambient temperature for the area in which the fuel will be used. Some equipment designs use flow improver additives, fuel properties, or operations, or a combination thereof, which may allow higher or require lower cloud point fuels. Appropriate low temperature operability properties should be agreed upon between the fuel supplier and purchaser for the intended use and expected ambient temperatures.

b. When cloud point less than 10°F is specified, the minimum viscosity shall be 1.7cs and the minimum 90 percent point shall be waived.

c. Where cetane number by Method D613 Test for Ignition Quality of Diesel Fuels by the Cetane Method, is not available, Calculated Cetane Index may be used as an approximation. Where there is disagreement, Method D613 shall be the referee method.

d. Low atmospheric temperatures as well as engine operation at high altitudes may require use of fuels with higher cetane ratings.

OCTOBER 1989

33-07-03.1-01. General provisions.

1. Institutions covered by the Medical Hospital Licensure Act. The following types of institutions have been so designated for the purpose of rules and are deemed to come within the provisions of North Dakota Century Code section 23-16-01 which provides for licensure of any institution which maintains and operates organized facilities for the diagnosis, treatment, or care of two or more nonrelated persons suffering from illness, injury, or deformity or where obstetrical or other care is rendered over a period exceeding twenty-four hours.
 - a. Hospitals, including general, medical, and specialized hospitals.
 - b. Long-term care facilities.
 - (1) Skilled nursing facilities.
 - (2) Intermediate care facilities.
 - c. Infirmaries.
 - d. Maternity homes.
 - e. Outpatient facilities, including ambulatory surgical centers (excluding physicians' clinics).
2. Institutions not covered by the Medical Hospital Licensure Act. The following types of institutions which provide some medical or nursing service are deemed not to come within the meaning of the Medical Hospital Licensure Act, North Dakota Century Code chapter 23-16.

- a. Any institution which is regularly licensed by the department of human services such as homes for unmarried mothers and homes providing custodial care for the aged.
 - b. Federal and state institutions. (In the case of state institutions, the primary purpose of which is the provision of medical care, the department has the responsibility for inspection on the same basis as those made of institutions which are covered by North Dakota Century Code chapter 23-16. Upon the findings of such inspections, recommendations will be formulated by the department.)
 - c. Chiropractic hospitals. (These hospitals are licensed under the provisions of North Dakota Century Code chapter 23-17.)
 - d. Homes in which the only persons receiving nursing care are those related to the householder by blood or marriage.
 - e. Homes in which only one person receives care at any one time except maternity homes which receive more than one patient in six months. Such maternity homes are deemed to come under North Dakota Century Code chapter 23-16 and are required to be licensed.
 - f. First aid stations and emergency care facilities which do not provide accommodations for hospitalization as herein defined.
3. Definitions. The following terms are defined for purposes of North Dakota Century Code chapter 23-16.
- a. "Ambulatory surgical center" means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization.
 - b. "Bed capacity" means:
 - (1) All spaces designed for resident bedrooms even if currently closed or assigned to easily convertible nonresident uses such as storage or staff quarters.
 - (2) Space in areas originally designed as solaria, waiting rooms, offices, conference rooms, and classrooms which have necessary fixed equipment (nurses' call, lighting, etc.) and are accessible to a nurses' station exclusively staffed for resident care.
 - (3) Space under construction designed as resident bedrooms or designed to be readily convertible to

resident bedrooms if planned for immediate completion (excludes unfinished shelled-in floors).

Bed capacity is determined by the floor area (square feet) in the following manner:

- (4) In measuring the floor area of spaces usable as resident bedrooms for the purpose of determining bed capacity, only the net usable space in the room may be considered. Space in toilet rooms, washrooms, closets, vestibules, and corridors may not be counted as part of the net usable space (square feet).
 - (5) Resident bedrooms must have adequate floor space to conveniently house necessary furniture and equipment, to provide for efficient resident care, and to provide for convenient movement of stretchers, and for the transfer of residents to and from beds. Adequate floor space is defined as:
 - (a) In single resident rooms the least dimension free of fixed obstructions must not be less than ten feet [3.05 meters], and the floor area must not be less than one hundred twenty-five square feet [11.61 square meters], nor more than one hundred forty-five square feet [13.47 square meters].
 - (b) Resident rooms having two or more beds must have as a minimum floor area, eighty square feet [7.43 square meters] of space free of fixed obstructions per bed. The least dimension of a rectangular multiple resident room must not be less than eleven feet six inches [3.50 meters] free of fixed obstructions, except in especially arranged rectangular rooms such as, for example, in the toe-to-toe arrangement where the minimum clear width must not be less than ten feet [3.05 meters] and the minimum clear length must not be less than seventeen feet six inches [5.33 meters] free of fixed obstructions.
 - (c) In the case of other than rectangular shaped rooms, there must be adherence to the principles of specified minimum dimensions and areas per bed in rectangular rooms.
- c. "Department" means the state department of health and consolidated laboratories.
 - d. "Emanating services" means services which originate out of and are provided out of a licensed skilled nursing facility or intermediate care facility to facilities not

subject to licensure by the department for which the governing body of a licensed skilled nursing facility or intermediate care facility has responsibility.

- e. "General hospital" means an establishment with organized medical staffs; with permanent facilities that include inpatient beds; and with medical services including physician services and continuous nursing services to provide diagnosis and treatment for a variety of medical conditions, both surgical and nonsurgical, and services including rehabilitation services.
- f. "Governing body" means the individual or group in whom the ultimate authority and legal responsibility is vested for the conduct of the long-term care facility.
- g. "Hospital" means an institution, the principal activity or business of which is the reception of a person for diagnosis, care, and treatment of human illness through the maintenance and operation of organized facilities therefor.
- h. "Hospitalization" means the reception and care of any person for a continuous period longer than twenty-four hours, for the purpose of consultations, diagnosis, or treatment including rehabilitation bearing on the physical and mental health of such person.
- i. "Infirmery" means those special inpatient facilities which are established in connection with an educational or penal institution, or an industrial or commercial establishment for persons who during their attendance, confinement, or employment in such institution or establishment, require nursing service or physician treatment. Applicable requirements of North Dakota Administrative Code chapter 33-07-01 apply.
- j. "Level of care" means the classification of a resident in accordance with the resident's medical and nursing needs generally expressed as a skilled, intermediate, or basic level of care dependent upon the degree of care necessitated to adequately care for the needs of the resident.
- k. "Licensee" means the governing body of the hospital, related institution, skilled nursing facility, or intermediate care facility.
- l. "Long-term care facilities" are the following:
 - (1) "Intermediate care facility" means an institution in which nursing care is rendered for compensation at any one time to two or more persons not related to

the licensee by blood or marriage. An intermediate care facility shall serve persons suffering from prolonged physical or mental illness or defect or persons recovering from some injury or disease requiring less than twenty-four hours per day of nursing service provided by licensed personnel. Care given in an intermediate care facility must include procedures commonly employed in waiting on the sick, such as administration of medication, preparation of special diets, giving of bedside care, applications of dressings and bandages, and carrying out treatments prescribed by a licensed physician. An intermediate care facility may not provide for any higher level of care.

(2) "Skilled nursing facility" means an institution in which nursing care is rendered for compensation at any one time to two or more persons not related to the licensee by blood or marriage. A skilled nursing facility must serve persons suffering from a prolonged physical or mental illness or defect or persons recovering from some injury or disease and requiring twenty-four-hour nursing services provided by licensed personnel. Care given in a skilled nursing facility must provide all of the procedures commonly employed in waiting on the sick, such as administration of medicines, preparation of special diets, giving of bedside care, applications of dressings and bandages, and carrying out of treatments prescribed by a licensed physician. A skilled nursing facility may not provide for any higher level of care.

(3) If a facility is established for the provisions of custodial and personal care, but it develops that two or more persons usually served by such institutions require nursing care, such institutions are deemed to come within the meaning of North Dakota Century Code chapter 23-16 and such facility must conform to this chapter and chapter 33-07-04.1 or the institution shall transfer such patients to facilities properly staffed and equipped to care for such persons.

m. "Maternity home" means an institution of private dwelling type in which care for maternity patients is rendered. Any such home which receives more than one maternity patient (exclusive of those related to the licensee by blood or marriage) within a period of six months is deemed to be a maternity home. A maternity home which regularly provides accommodations for two or more patients at any one time must be classified as a maternity hospital and is required to meet the requirements for a specialized

hospital. Applicable requirements of chapter 33-07-01 apply.

- n. "Medical hospital" means an establishment with organized medical staff; with permanent facilities that include inpatient beds; and with medical services, including physician services and continuous nursing services, to provide diagnosis; and to provide nonsurgical treatment.
- o. "Medical staff" means a formal organization of physicians (and dentists, where appropriate) with the delegated authority and responsibility to maintain proper standards of medical care and to plan for continued improvement of that care. This does not preclude the establishment of other medical staff sections.
- p. "Mental health professional" means:
 - (1) A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
 - (2) A social worker with a master's degree in social work from an accredited program.
 - (3) A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
 - (4) A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined in subsection 3.
 - (5) A licensed addiction counselor.
- q. "Nursing services" means those services pertaining to the curative, restorative, or preventive aspects of nursing care that are performed or supervised by a registered professional nurse at the direction of a physician.
- r. "Outpatient facility" (including ambulatory surgical centers - excluding physician's clinic) means a facility located in or apart from a hospital, providing community service for the diagnosis or diagnosis and treatment of ambulatory patients in need of physical or mental care:
 - (1) Which is operated in connection with a hospital;
 - (2) In which patient care is under the professional supervision of licensed physicians in various medical specialties in the state or, in the case of dental diagnosis or treatment, under the professional

supervision of persons licensed to practice dentistry in the state; or

- (3) Which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which makes provision for its patients to receive a reasonably full range of diagnostic and treatment services.

4. Application for long-term care facility license general provisions.

- a. No person or entity may establish, maintain, or operate a long-term care facility without first having obtained a license. Any person or entity who owns or leases a long-term care facility and desires to maintain or operate it shall apply to the department for a license in the form prescribed and shall obtain a license before accepting residents for care or treatment.
- b. Each long-term care facility applying for a license must be designated by a distinctive name consistent with the services offered to avoid public confusion or misrepresentation. The name may not be changed without department approval.
- c. In the case of a hospital, related institution, skilled nursing facility, or intermediate care facility, where two or more buildings are used in the care of residents, a separate license is required for each building. Separate licenses are required even though the buildings are operated under the same management.
- d. Every license application must be notarized and signed by an authorized corporate officer, general partner, or sole proprietor of the long-term care facility, as appropriate.
- e. Upon receipt of a completed license application, the department shall review the long-term care facility to determine compliance with this chapter and chapter 33-07-04.1, including onsite inspections, as appropriate.
- f. The license must be displayed in a conspicuous place. Each license is valid only in the hands of the person to whom it is issued and is not subject to sale, assignment or other transfer, voluntary or involuntary, nor is a license valid for any premises other than those for which originally issued.
- g. The department may require submission of periodic reports including, but not limited to, staffing reports, census data, statistical information, and such business records

as the department may reasonably require for the performance of its licensure functions.

- h. The holder of each license issued by the department shall surrender the license immediately upon suspension, revocation, refusal to renew, or discontinuance of the operation of the long-term care facility.
 - i. The department may summarily suspend a license pending proceedings for revocation of or refusal to renew the license in cases of deliberate or willful violation, or where the public health, safety, or welfare imperatively requires emergency action.
 - j. The department and any duly authorized representative thereof have the right to enter upon and into the premises of any long-term care facility in order to determine the state of compliance with North Dakota Century Code chapter 23-16 and this chapter and chapter 33-07-04.1 and initially identify themselves to the person in charge of the long-term care facility at the time.
 - k. Any long-term care facility which advertises or holds itself out to the public as having a special care unit for provision of care to people afflicted with alzheimer's or related disorders shall request their special care unit be licensed. Such long-term care facilities shall comply with the provisions of this chapter and chapter 33-07-04.1 as well as the requirements of section 33-07-03.1-21. The long-term care facility's license to operate shall identify provision of a special care unit.
 - l. Long-term facilities wishing to install restricting devices on exterior doors that are not part of a special care unit must have department approval and shall comply with subsection 2 of section 33-07-04.1-20 except that the main public access doors to a long-term care facility may not be equipped with restricting devices.
5. Application for an initial long-term care facility license. An application for an initial license must include the following information:
- a. Bylaws and articles of incorporation or partnership agreement, as appropriate, must accompany the initial application. Changes must be reported to the department within thirty days of occurrence.
 - b. If a partnership, the name, address, and ownership share (expressed as a percentage), and legal status (general or limited) of each partner.

- c. If a corporation, the address, and ownership share of each shareholder who directly or indirectly owns or controls five percent or more of the shares of the corporation, and the name, address, and corporate title of each officer and director. In addition, copies of all documents of incorporation filed with the North Dakota secretary of state must be filed with the department.
- d. If a sole proprietorship or any form of business entity, the name and address, title, and ownership share (expressed as a percentage) of each person with a financial interest therein, and the name, address, and title of every person who controls, directs, or operates the business entity.
- e. If the applicant is the lessee of the long-term care facility, it shall furnish the information required for an initial license for itself and the lessor. A copy of the relevant lease must be submitted to the department.
- f. The applicant's legal name and other names under which it does business.
- g. Each applicant shall furnish to the department a signed and notarized statement at the time of initial application, describing and dating every proceeding in the United States within five years of the date of application, in which the applicant was involved, the result of which was a limitation upon or a suspension, revocation, or refusal to grant or renew a long-term care facility license, certification for medicaid or medicare, or contract for participation in medicaid or medicare.
- h. Each applicant shall furnish a signed and notarized statement to the department at the time of initial application, describing every criminal proceeding within five years of the date of the application in which the licensee or any of its shareholders owning an interest of five percent or more, officers, directors, partners, or other controlling or managing persons, has been convicted, or nolo contendere plea accepted, of a criminal offense related to the operation, management, or ownership of a long-term care facility.
- i. Each applicant shall furnish to the department the information required for an initial license with respect to any management company with which it contracts for management services for the long-term care facility.
- j. The department may not approve an application for an initial license unless:

- (1) The application and all required attachments and statements submitted by the applicant meet the requirements of this chapter and chapter 33-07-04.1.
 - (2) The department has conducted an inspection or investigation of the long-term care facility to determine compliance with this chapter and chapter 33-07-04.1.
 - (3) The department has conducted an investigation of the fitness of the applicant. In the determination of this fitness, the department shall consider the following:
 - (a) Whether the applicant has legal capacity demonstrated by such documents as articles of incorporation to provide the services for which the license is sought.
 - (b) Whether financial resources and sources of revenue for the specific long-term care facility of the applicant appear adequate to provide staff, services, and the physical environment sufficient to comply with North Dakota Century Code chapter 23-16 and this chapter and chapter 33-07-04.1.
 - (c) Whether a substantially consistent and adequate level of care, as measured by compliance with this chapter and chapter 33-07-04.1 and other pertinent evidence, is being or was rendered by the applicant during the five-year period prior to the date of application in each institution in which the applicant exercised ownership, management, or operational functions.
6. Application for license renewal. The licensee shall submit a completed application to the department. The department may require reports including, but not limited to, staffing reports, census data, statistical information, and such business records as the department may reasonably require for the performance of its licensure functions.
7. Provisional license.
- a. If the long-term care facility fails to conform to the requirements of North Dakota Century Code chapter 23-16 and this chapter and chapter 33-07-04.1, the department may refuse to issue a license, but may issue a provisional license to allow the long-term care facility to comply with licensing requirements, if the licensee makes a substantial good faith attempt to comply with such requirements and requires time to effect compliance.

- b. The provisional license is valid for ninety days.
 - c. The provisional license may be renewed once, if the licensee demonstrates to the department that it has made further substantial progress towards compliance, and can effect compliance within the following ninety days.
 - d. Before determining whether to issue a permanent license to a provisionally licensed long-term care facility, the department shall conduct a survey or such other investigation as it deems necessary to determine that the long-term care facility meets the requirements for licensure.
8. Change or modification of license. The holder of a license shall notify the department in writing thirty days in advance of any of the following changes:
- a. In the case of a partnership, transfer of ownership includes dissolution of the partnership and conversion thereof into any other entity or the removal, addition, or substitution of an individual or other entity for a general partner.
 - b. Transfer of ownership of a sole proprietorship (any business owned by a single individual) includes transfer of title and property to another person.
 - c. Transfer of ownership of a corporation does not, in itself, include transfer of corporate stock or merger of one or more corporations with the licensee surviving. Transfer of ownership of a corporation includes consolidation of two or more corporations resulting in the creation of a new corporate entity and formation of a corporation from a partnership or a sole proprietorship.
 - d. Transfer of operating rights of the licensee includes a lease of the long-term care facility where the lessor retains no control of the operation or management of the long-term care facility and where the lessor is paid by a contract which specifies the amount of the payment.
 - e. Change in bed capacity.
 - f. Change in levels of long-term care services.
 - g. Change in name of long-term care facility.
 - h. Change of administrator.

History: Effective December 1, 1986; amended effective August 1, 1989; October 1, 1989.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

STAFF COMMENT: Sections 33-07-03.1-22 and 33-07-04.1-20 contain all new material but are not underscored so as to improve readability.

33-07-03.1-22. Special care units.

1. Description. A special care unit is an optional inpatient facility which may be established in connection with a long-term care facility and which is designed to provide care for persons diagnosed with dementia and related disorders. The special care unit should be designed as other nursing units, except that restricting devices may be placed on exit doors to prevent residents from wandering away from the unit and as otherwise provided in section 33-07-04.1-20.
2. Preadmission screening. Prior to admission, a multidisciplinary evaluation team shall evaluate the appropriateness of an individual's placement in the special care unit. The evaluation team shall consist of, at a minimum, a registered nurse and a social worker who will be providing services in a special care unit, the prospective resident's attending physician, and the prospective resident's guardian. The evaluation team recommending placement in a special care unit shall make detailed written findings, based on documented evidence, describing the factual basis for their determination. The team's findings must demonstrate that the individual needs to be admitted to the special care unit for at least one of the following reasons:
 - a. The individual is independently mobile, either through ambulation or wheelchair, and habitually wanders or would wander out of the building and is unable to find the way back.
 - b. The individual exhibits a dementing illness, is still ambulatory, and would benefit from therapeutic programs specifically designed to meet their individual needs and capabilities.
 - c. The individual's behavior requires staff attention and redirection because of repeated episodes of unpredictable combative or verbal abuse, disorientation, wandering, and removing or destroying property of others. It shall be determined and documented by the physician and reviewed by the pharmacist that such behavior is not drug or medication induced.

The evaluation team's findings must also demonstrate that other living alternatives allowing free and less restricted movement were or are unsuccessful or inappropriate, or both.

3. Admission records. The admission records of a resident in a special care unit must, at a minimum, contain:
 - a. The written findings of the multidisciplinary evaluation team.
 - b. An informed, written consent for admission signed by the resident or the resident's guardian.
 - c. An order for admission signed by the resident's attending physician.
4. Prohibitions. Special care units may not be used to care for individuals with acute mental illness or for individuals with a primary diagnosis of mental illness or mental retardation. Furthermore, residents may not be placed in special care units as a means of punishment, as an alternative to maintaining proper staffing at the long-term care facility, or as a convenience to long-term care facility staff.
5. Placement evaluation and transfer or discharge.
 - a. The evaluation team described in subsection 2 must reevaluate the placement of each resident every thirty days for the first ninety days after admission and no less than every one hundred eighty days thereafter.
 - b. If placement in the special care unit is determined inappropriate at any time by the professional personnel responsible for development and review of the resident's overall plan of care (as identified in subsection 10 of section 33-07-03.1-05), it is the responsibility of the long-term care facility's social services department to notify the evaluation team and request they evaluate continued placement or possible discharge, or both, from the unit.
 - c. A resident's placement in, or restriction to, a special care unit shall terminate when:
 - (1) The condition or behavior justifying placement has diminished to the extent where the reasons for admission no longer exist or are no longer a factor in provision of care.
 - (2) Consent for placement is terminated or withdrawn by the resident or his guardian, or both.
 - (3) If the resident's attending physician determines continued placement would adversely affect the resident's health and safety.

- (4) The resident's needs can be met in a less restrictive setting or because their physical condition has deteriorated to the extent the therapeutic programming is no longer of benefit, or both.

6. Staffing.

- a. The unit must be separately staffed at all times.
- b. The unit shall have assigned a specially trained core staff in sufficient number to meet the needs of the residents. This core staff may not have simultaneous duties on other units.
- c. Staff working in the unit shall have special training in the particular care and needs of the types of residents admitted to the unit.
- d. For residents of the special care unit, the long-term care facility shall provide sufficient social work and activities staff to meet the social, emotional, and recreational needs of the residents.

7. Programs.

- a. In addition to meeting the special medical and nursing needs of each resident in the special care unit, the long-term care facility shall provide social services and activity programs especially designed to avoid programmatic isolation and to meet each resident's individual needs.
- b. The resident's individual program plan (plan of care) shall include therapeutic programming which will assist the resident in attaining or maintaining, or both, their maximal level of functional independence and provide for routine and ongoing out-of-facility activities.
- c. Activities and social service programs shall provide the opportunity for interaction with nondementia residents of the long-term care facility and the community outside the long-term care facility to respond to individual resident needs and capabilities.
- d. Residents of the unit may not be locked into or out of their rooms.
- e. The long-term care facility shall have written policies and procedures regarding admission (including criteria for admission), discharge (including criteria for discharge), and provision of services in the special care unit.

History: Effective October 1, 1989.

General Authority: NDCC 23-01-03
Law Implemented: NDCC 23-16-01

33-07-04.1-20. Physical facilities - Special care units.

1. In addition to the physical plant requirements of this chapter, a long-term care facility with a special care unit shall provide the following:
 - a. Dining area and recreational activities area within the unit which may not be the same space. The total area set aside for this purpose may not be less than twenty square feet [1.86 square meters] per bed for dining purposes, and fifteen square feet [1.40 square meters] per bed for recreational activities purposes.
 - b. A visitation room, appropriately furnished where residents may meet privately with family members, visitors, clergy, etc.
 - c. Toilet in or adjacent to recreation and dining areas.
 - d. Bathing facilities within the unit which are functionally usable by residents of the unit.
 - e. The unit shall provide a homelike atmosphere, furnished and decorated to respond to individual resident needs.
2. Special care units utilizing restricting devices on doors shall comply with the following:
 - a. Restricting devices may only be installed in buildings protected throughout by an approved supervised automatic fire detection system or approved supervised automatic sprinkler system.
 - b. Restricting devices must unlock upon activation of an approved supervised automatic fire detection system or approved supervised automatic sprinkler system.
 - c. Restricting devices must unlock upon loss of power controlling the lock or locking mechanism.
 - d. The restricting devices must be designed and equipped so that a competent person may leave the unit at any time without the use of a key or requiring special instructions. The system used to comply with this requirement is subject to approval by the licensing agency and the state fire marshal's office.

3. If a long-term care facility has a special care unit and utilizes restricting devices, they shall provide their residents with immediate access to a secured outdoor area.
4. Review of plans. A long-term care facility wishing to open a special care unit shall submit its plans for physical plant, staffing, and program to the department for prior review of conformity with these requirements.

History: Effective October 1, 1989.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-16-01

33-16-01-01. General.

1. Authority. The authority for this chapter relating to the control, prevention, and abatement of pollution of natural surface and underground waters is provided by North Dakota Century Code section 61-28-04.
2. Scope and purpose. This chapter establishes procedures governing the application for, and the issuance, denial, modification and revocation of, permits for the discharge of pollutants into the waters of the state, as defined by subsection 6 of North Dakota Century Code section 61-28-02. The establishment of such procedures is required as a condition precedent to participation by North Dakota in the national pollutant discharge elimination system, pursuant to the provisions of section 402(b) of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].
3. Definitions. As used in this chapter, unless the context otherwise indicates:
 - a. "Administrator" means the administrator of the United States environmental protection agency.
 - b. "Applicable water quality standards" means all water quality standards to which a discharge is subject under the Federal Water Pollution Control Act and which have been (1) approved or permitted to remain in effect by the administrator following submission to the administrator pursuant to section 303(a) of the Federal Water Pollution Control Act, or (2) promulgated by the administrator pursuant to section 303(b) or (c) of the Federal Water Pollution Control Act.
 - c. "Biological monitoring" ~~shall mean~~ means the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (1) by techniques and procedures, including sampling of organisms representative of

appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (2) at appropriate frequencies and locations.

- d. "Department" means the North Dakota state department of health and consolidated laboratories.
- e. "Discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.
- f. "Discharge of a pollutant" and "discharge of pollutants" each means any addition of any pollutant to the waters of the state from any source, including the disposal of pollutants into wells.
- g. "Effluent standard" or "effluent limitation" means any restriction established by the department on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into the waters of the state. Such restrictions shall be at least as stringent as standards adopted by the administrator pursuant to the provisions of the Federal Water Pollution Control Act. Such restrictions shall include, but not be limited to, effluent limitations and applicable compliance schedules, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards adopted by the administrator pursuant to the aforesaid Act.
- h. "EPA" means the United States environmental protection agency.
- i. "Industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category "Division D - Manufacturing" and such other classes of significant waste producers as, by regulation, the administrator deems appropriate.
- j. "Minor discharge" means any discharge which (1) has a total volume of less than fifty thousand gallons [189,250 liters] on every day of the year, (2) does not affect the waters of more than one state, and (3) is not identified by the department, the administrator, or by the regional administrator in regulations issued pursuant to section 307(a) of the Federal Water Pollution Control Act as a discharge which is not a minor discharge. If there is more than one discharge from a facility and the sum of the volumes of all discharges from the facility exceeds fifty thousand gallons [189,250 liters] on any day of the year, then no discharge from the facility is a "minor discharge" as defined herein.

- k. "Municipality" means a city, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of wastes, as the term is defined by subsection 2 of North Dakota Century Code section 61-28-02, or a designated and approved management agency under section 209 of the Federal Water Pollution Control Act.
- l. "National data bank" means a facility or system established or to be established by the administrator for the purposes of assembling, organizing, and analyzing data pertaining to water quality and the discharge of pollutants.
- m. "National pollutant discharge elimination system (NPDES)" means the national system for the issuance of permits under section 402 of the Federal Water Pollution Control Act of 1972 and includes any state or interstate program which has been approved by the administrator pursuant to section 402 of the Federal Water Pollution Control Act.
- n. "NPDES application" or "application" means the uniform national forms (including subsequent additions, revisions, or modifications duly promulgated by the administrator pursuant to the Federal Water Pollution Control Act) for application for a national pollutant discharge elimination system permit.
- o. "NPDES form" means any issued national pollutant discharge elimination system permit and any uniform national form developed for use in the national pollutant discharge elimination system and prescribed in regulations promulgated by the administrator.
- p. "NPDES permit" means any permit issued by the department pursuant to its authority under North Dakota Century Code section 61-28-04, and subsequent to approval by the administrator as described in subsection 5 of section 33-16-01-04.
- q. "NPDES reporting form" means the uniform national forms (including subsequent additions, revisions, or modifications duly promulgated by the administrator pursuant to the Federal Water Pollution Control Act) for reporting data and information pursuant to monitoring and other conditions of national pollutant discharge elimination system permits.
- r. "Pollutant" means "wastes" as defined in subsection 2 of North Dakota Century Code section 61-28-02, and including but not limited to dredged spoil, solid waste, incinerator residue, garbage, sewage, sludge, munitions, chemical wastes, biological materials, radioactive materials, heat,

wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water "Person" means the state or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual partnership, association, any agency or instrumentality of the United States government, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.

- s. "Refuse Act application" means the application for a permit under section 13 of the River and Harbor Act of 1899 (33 U.S.C. 407) "Pollutant" means "wastes" as defined in subsection 2 of North Dakota Century Code section 61-28-02; and including, but not limited to, dredged spoil, solid waste, incinerator residue, garbage, sewage, sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.
- t. "Regional administrator" means the regional administrator of region VIII of the environmental protection agency, which includes within its jurisdiction North Dakota "Refuse Act application" means the application for a permit under section 13 of the River and Harbor Act of 1899 [33 U.S.C. 407].
- u. "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard "Regional administrator" means the regional administrator of region VIII of the environmental protection agency, which includes within its jurisdiction North Dakota.
- v. "Toxic pollutant" means those pollutants, or combinations of pollutants, including but not limited to, disease causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

- w. "Waters of the state" means all waters included within the definitions given in subsection 6 of North Dakota Century Code section 61-28-02 or North Dakota Century Code section 61-01-01 "Toxic pollutant" means those pollutants, or combinations of pollutants, including, but not limited to, disease causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.
- x. "Waters of the state" means all water included within the definitions given in subsection 6 of North Dakota Century Code section 61-28-02 or North Dakota Century Code section 61-01-01.

History: Amended effective October 1, 1989.
General Authority: NDCC 61-28-04
Law Implemented: NDCC 61-28-04

STAFF COMMENT: Section 33-16-01-26.1 contains all new material but is not underscored so as to improve readability.

33-16-01-26.1. General permits.

1. Coverage. The department may issue a general permit in accordance with the following:
 - a. Area. The general permit will be written to cover a category of discharges described in the permit under subdivision b, except those covered by individual permits, within a designated area. The area will correspond to existing geographic or political boundaries or any other appropriate division or combination of boundaries.
 - b. Sources. The general permit may be written to regulate, within the designated area as described in subdivision a, categories of point sources if the sources all:
 - (1) Involve the same or substantially similar types of operations;
 - (2) Discharge the same types of wastes;
 - (3) Require the same effluent limitations or operating conditions;
 - (4) Require the same or similar monitoring; and

- (5) In the opinion of the department, are more appropriately controlled under a general permit than under individual permits.

2. Administration.

- a. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of chapter 33-16-01.

- b. Requiring an individual permit.

- (1) The department may require any person authorized by a general permit to apply for and obtain an individual North Dakota pollutant discharge elimination system permit. Any interested person may petition the director to take action under this paragraph. Cases where an individual North Dakota pollutant discharge elimination system permit may be required include the following:

- (a) The discharge is a significant contributor of pollution as determined by the factors set forth in chapter 33-16-01;

- (b) The discharger is not in compliance with the conditions of the general North Dakota pollutant discharge elimination system permit;

- (c) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

- (d) Effluent limitation guidelines are promulgated for point sources covered by the general North Dakota pollutant discharge elimination system permit;

- (e) A North Dakota water quality management plan containing requirements applicable to such point sources is approved; or

- (f) The requirements of subsection 1 are not met.

- (2) Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under section 33-16-01-02, to the department with reasons supporting the request. The request must be submitted no later than ninety days after the notice by the department in accordance with section

33-16-01-07. The request must be processed under chapter 33-16-01. If the reasons cited by the owner or operator are adequate to support the request, the department may issue an individual permit.

- (3) When an individual North Dakota pollutant discharge elimination system permit is issued to an owner or operator otherwise subject to a general North Dakota pollutant discharge elimination system permit, the applicability of the general permit to the individual North Dakota pollutant discharge elimination system permittee is automatically terminated on the effective date of the individual permit.
- (4) A permittee, excluded from a general permit solely because the permittee already has an individual permit, may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

History: Effective October 1, 1989.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

NOVEMBER 1989

33-25-01-01. Definitions.

1. "Abandoned well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.
2. "Area of review" means the area of review surrounding an injection well described according to the criteria in 40 CFR ~~146.06~~ 146.6 and 146.63.
3. "Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.
4. "Catastrophic collapse" means the sudden and utter failure of overlying strata caused by removal of underlying materials.
- ~~4.~~ 5. "CFR" means Code of Federal Regulations as of ~~July 1, 1982~~ August 27, 1987.
- ~~5.~~ 6. "Director" means the director of the division of water supply and pollution control of the state department of health and consolidated laboratories.
- ~~7.~~ 7. "Exempted aquifer" means an aquifer or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures of subsection 2 of section 33-25-01-05.

8. "Fluid" means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.
- ~~6-~~ 9. "Formation" means a body of rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.
- ~~7-~~ 10. "Hazardous waste" means a hazardous waste as defined in 40 CFR 261.3.
11. "Injection zone" means a geological formation, group of formations, or part of a formation receiving fluids through a well.
12. "Packer" means a device lowered into a well to produce a fluidtight seal.
- ~~8-~~ 13. "Plugging" means the act or process of stopping the flow of water, oil, or gas into and out of a formation through a borehole or well penetrating that formation.
- ~~9-~~ 14. "Radioactive waste" means any waste which contains hazardous material in concentrations which exceed those listed in 10 CFR part 20, appendix B, table II, column 2, or exceed the criteria for identifying and applying characteristics for hazardous waste and for listing hazardous waste in 40 CFR, part 261, whichever is applicable.
- ~~10-~~ 15. "Well" means a bored, drilled or driver shaft, or a dug hole, whose depth is greater than the largest surface dimension.

History: Effective June 1, 1983; amended effective November 1, 1989.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04

33-25-01-02. Classification of injection wells. Injection wells are classified as follows:

1. Class I. Wells used to inject hazardous waste and other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one quarter mile [402.34 meters] of the well bore, an underground source of drinking water.
2. Class II. Wells which inject fluids:
 - a. Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with wastewaters from gas plants which are an integral part of production operations, unless those

waters are classified as a hazardous waste at the time of injection;

- b. For enhanced recovery of oil or natural gas; and
 - c. For storage of hydrocarbons which are liquid at standard temperature and pressure.
3. Class III. Wells which inject for extraction of minerals or energy.
 4. Class IV. Wells used to dispose of hazardous wastes or radioactive wastes into or above a formation which, within one quarter mile [402.34 meters] of the well, contains an underground source of drinking water and wells used to dispose of hazardous wastes which cannot be classified under Class I wells, e.g., wells used to dispose of hazardous wastes into or above a formation which contains an exempted aquifer.
 5. Class V. Injection wells not included in Class I, II, III, or IV.

History: Effective June 1, 1983; amended effective November 1, 1989.

General Authority: NDCC 23-20.3, 61-28-04, 61-28.1-03

Law Implemented: NDCC 23-20.3, 61-28-04, 61-28.1-03

33-25-01-03. Prohibition of unauthorized injection. Any underground injection (except Class II and III) is prohibited except as authorized by permit or rule issued under this section. Also the construction of any well required to have a permit under this section is prohibited until the permit has been issued.

History: Effective June 1, 1983.

General Authority: NDCC 61-28-04, ~~61-28-06~~

Law Implemented: NDCC 61-28-04, 61-28-06

33-25-01-04. Prohibition of movement of fluid into underground sources of drinking water.

1. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other underground injection activity in a manner which causes or allows movement of fluid containing any contaminant into an underground source of drinking water if the presence of that contaminant may cause a violation of any maximum contaminant level under chapter 33-17-01 or which may adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this section are met.
2. The director shall prescribe additional requirements in accordance to 40 CFR 144.12(b) through (e) for all injection

wells which may cause a violation of a maximum contaminant level under chapter 33-17-01 or which may adversely affect the health of persons.

History: Effective June 1, 1983; amended effective November 1, 1989.

General Authority: NDCC 61-28-04, 61-28.1-03

Law Implemented: NDCC 61-28-04, 61-28.1-03

33-25-01-05. Identification of underground sources of drinking water and exempted aquifers.

1. The director may identify and shall protect as an underground source of drinking water all aquifers or parts of aquifers which ~~are not exempted aquifers and which:~~
 - a. Supply any public water system; or
 - b. Contain a sufficient quantity of ground water to supply a public water system and:
 - (1) Currently supply drinking water for human consumption; or
 - (2) Contain fewer than ten thousand milligrams per liter total dissolved solids-; and
 - (3) Are not exempted aquifers.
2. After notice and opportunity for a public hearing the director may designate, identify, and describe in geographic or geometric terms, or both, which are clear and definite exempted aquifers or parts thereof using the following criteria:
 - a. It does not currently serve as a source of drinking water; and
 - b. (1) It cannot now and will not in the future serve as a source of drinking water because:
 - (a) It is mineral, hydrocarbon, or geothermal energy producing;
 - (b) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical;
 - (c) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or

(d) It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or

(2) The total dissolved solids content of the ground water is more than three thousand and less than ten thousand milligrams per liter and it is not reasonably expected to supply a public water system.

History: Effective June 1, 1983; amended effective November 1, 1989.

General Authority: NDCC 61-28-04, 61-28.1-03

Law Implemented: NDCC 61-28-04, 61-28.1-03

33-25-01-06. Permitting.

1. Application for a permit.

- a. Any person who is required to have a permit shall complete, sign, and submit an application to the director.
- b. When the owner and operator are different, it is the operator's duty to obtain a permit.
- c. The application must be complete before the permit is issued.
- d. All applicants of Class I wells shall provide information specified in 40 CFR ~~144.31(e)~~ and 146.14(a) using the application form specified by the director and (c) (for Class I nonhazardous waste injection wells) or 40 CFR 146.70(a), 146.71(a), and 146.72(a) (for Class I hazardous waste injection wells).
- e. Applicants shall keep records of all data used to complete permit applications and supplemental information for at least three years from the date the application is signed.
- ~~f. Existing Class I wells shall be authorized to inject for a period of one year after approval of the state program.~~
- ~~g. Operators of existing Class I injection wells shall submit an application within six months and obtain a permit within one year after approval of the state program.~~
- ~~h. f.~~ Operators of new injection wells, unless covered by an existing area permit, shall submit an application within a reasonable time before construction is expected to begin.

2. Signatories to permit applications.

- a. All permits shall be signed as follows:

- (1) For a corporation: by a principal executive officer of at least the level of vice president.
- (2) For a partnership or sole proprietor: by a general partner or proprietor.
- (3) For a municipality, state, federal, or other public agency: by either a principal officer or authorized representative.

b. A person is a duly authorized representative if the authorization:

- (1) Is made in writing by the legal signatory;
- (2) Specifies an individual or position having responsibility for the overall operation; and
- (3) Is submitted to the director either prior to or along with documents signed by the authorized representative.

Changes in authorization must be in writing and submitted to the director.

3. Duration of permits. Underground injection control permits for Class I and V wells shall be effective for a fixed term of not more than ten years.

4. Transfer of permits.

a. Any Class V permit may be automatically transferred to a new permittee if:

- (1) The current permittee notifies the director at least thirty days prior to the proposed transfer date; and
- (2) The notice includes a written agreement between the existing and new permittee containing:
 - (a) A specific date for transfer of permit responsibility, coverage, and liability; and
 - (b) A demonstration that the new permittee meets the financial responsibility requirements.

b. Permits for Class I wells may be transferred only if the permit has been modified or revoked and reissued.

5. Modification, revocation and reissuance, or termination of permits.

- a. Permits may be modified, revoked and reissued, or terminated at the request of any affected person or at the director's initiative if cause exists as specified in 40 CFR ~~122.15(a) and (b)~~ 144.39. All requests shall be in writing and shall contain facts or reasons supporting the request.
- b. If the director tentatively decides to modify or revoke and reissue a permit, the director shall prepare a draft permit incorporating the proposed changes. The director may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the director shall require the submission of a new application.
- c. The following are causes for terminating a permit during its term or for denying a permit renewal application:
 - (1) Noncompliance by the permittee with any permit condition;
 - (2) Failure by the permittee to fully disclose all relevant facts or misrepresentation of relevant facts; or
 - (3) A determination that the permitted activity endangers human health or the environment.
- d. If the director tentatively decides to terminate a permit, the director shall issue notice of intent to terminate.

History: Effective June 1, 1983; amended effective November 1, 1989.

General Authority: NDCC 61-28-04, ~~61-28-06~~

Law Implemented: NDCC 61-28-04, 61-28-06

33-25-01-07. Area permits.

1. The director may issue a permit on an area basis, rather than for each well individually; provided, that the permit is for injection wells:
 - a. Described and identified by location in permit applications, if they are existing wells;
 - b. Within the same well field, facility site, reservoir, project, or similar unit in the same state;
 - c. Of similar construction;
 - d. Of the same class;

- e. Operated by a single owner or operator; and
 - f. Used to inject other than hazardous waste.
2. Area permits shall specify:
 - a. The area within which underground injections are authorized; and
 - b. The requirements for construction, monitoring, reporting, operation, and abandonment for all wells authorized by the permit.
 3. The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area, provided:
 - a. The permittee notifies the director at such time as the permit requires;
 - b. The additional well meets the area permit criteria; and
 - c. The cumulative effects of drilling and operation of additional injection wells are acceptable to the director.
 4. If the director determines that any additional well does not meet the area permit requirements, the director may modify or terminate the permit or take enforcement action.
 5. If the director determines the cumulative effects are unacceptable, the permit may be modified.

History: Effective June 1, 1983.

General Authority: NDCC 61-28-04, ~~61-28-06~~

Law Implemented: NDCC 61-28-04, 61-28-06

33-25-01-10. Conditions applicable to all permits.

1. The general conditions contained in 40 CFR ~~122.7~~ 144.51 apply to Class I and V underground injection control permits. All conditions shall be incorporated into the permits, either expressly or by reference.
2. A permittee may not commence injection into a new injection well until:
 - a. Construction is complete;
 - b. The permittee has submitted notice to the director that construction is complete; and

- c. The director has inspected or reviewed the new injection well and finds it in compliance with the permit, or the permittee has not received notice from the director of intent to inspect within thirteen days of the permittee's completion notice.
3. The director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into underground sources of drinking water.
4. The permit shall require the permittee to maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the director. The permittee must show evidence of financial responsibility to the director by the submission of surety bond, or other adequate assurance, such as financial statements or other materials acceptable to the director. Operators of Class I hazardous waste injection wells must maintain the resources to close, plug, or abandon the well and for postclosure care pursuant to 40 CFR 144 subpart F and 40 CFR 146.71 and 146.72.
5. The permittee shall retain all records concerning the nature and composition of injected fluids until three years after completion of plugging and abandonment of the well.
6. The following information shall be reported within twenty-four hours:
 - a. Any monitoring or other information which indicates that any contaminant may cause an endangerment to an underground source of drinking water.
 - b. Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between underground sources of drinking water.

History: Effective June 1, 1983; amended effective November 1, 1989.

General Authority: NDCC 23-20.3-03, 61-28-04, 61-28.1-03

Law Implemented: NDCC 23-20.3-03, 61-28-04, 61-28.1-03

33-25-01-11. Technical requirements.

1. Construction requirements.

- a. (1) Existing wells shall achieve compliance with construction requirements prior to permitting or according to a compliance schedule established as a permit condition.

- (2) New injection wells shall submit plans for testing, drilling, and construction as part of the permit application.
- (3) New injection wells shall be in compliance with construction requirements prior to commencing injection operations.
- (4) Changes in construction plans require approval of the director.

b. Class I well construction shall conform to the requirements contained in 40 CFR 146.12 (nonhazardous waste injection wells) or 40 CFR 146.65 (hazardous waste injection wells).

2. Corrective action.

a. Applicants for Class I nonhazardous waste injection well permits shall identify all known wells which penetrate the injection zone within the area of review.

b. For wells in the area of review which are improperly sealed, completed, or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into an underground source of drinking water. Applicants for Class I hazardous waste injection well permits are subject to the corrective action requirements of 40 CFR 146.64 and shall as part of the permit application submit a plan to the director outlining the protocol used to:

- (1) Identify all wells penetrating the confining zone or injection zone within the area of review; and
- (2) Determine whether wells are adequately completed or plugged.

c. All Class I injection wells are subject to the following:

(1) For wells in the area of review which are improperly sealed, completed, or abandoned, the applicant shall also submit a corrective action plan consisting of such steps or modifications as are necessary to prevent movement of fluid into an underground source of drinking water.

~~c.~~ (2) The director's review of the plan for corrective action plan shall consider all of the following criteria and factors:

~~↔~~ (a) Toxicity and volume of the injected fluid.

- ~~2~~ (b) Toxicity of native fluids or byproducts of injection.
- ~~3~~ (c) Potentially affected population.
- ~~4~~ (d) Geology.
- ~~5~~ (e) Hydrology.
- ~~6~~ (f) History of the injection operation.
- ~~7~~ (g) Completion and plugging records.
- ~~8~~ (h) Abandonment procedures in effect at the time the well was abandoned.
- ~~9~~ (i) Hydraulic connections with an underground source of drinking water.

~~d~~ (3) Where the corrective action plan is adequate, the director shall incorporate the plan into the permit as a condition.

~~e~~ (4) Where the corrective action plan is inadequate, the director shall:

- ~~1~~ (a) Require the applicant to revise the plan;
- ~~2~~ (b) Prescribe a corrective action plan as a permit condition; or
- ~~3~~ (c) Deny the permit.

~~f~~ (5) Permits for existing injection wells that require corrective action shall include a compliance schedule requiring corrective action as soon as possible.

~~g~~ (6) New injection wells may not be permitted until all required corrective action has been taken.

~~h~~ (7) The director may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of an improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other required corrective action has been taken.

3. All Class I hazardous waste injection wells must be sited in accordance with 40 CFR 146.62.

4. Operating, monitoring and reporting requirements for Class I wells shall at a minimum include the items contained in 40 CFR 146.13 (for nonhazardous waste injection wells) or 40 CFR 146.67, 146.68, and 146.69 (for hazardous waste injection wells).
- ~~4.~~ 5. In authorizing a new Class I well, the director shall require the submission of all the information specified in 40 CFR 144.31 and 146.14. For an existing or converted Class I well, the director may rely on the existing permit file for those items of information that are current and accurate (for nonhazardous waste injection wells) or 40 CFR 144.31, 146.70(a), 146.71(a), and 146.72(a) (for hazardous waste injection wells).
- ~~5.~~ 6. Prior to granting approval for the operation of a Class I well, the operator shall submit for review by the director shall consider the information listed in 40 CFR 146.14(b) (for nonhazardous waste injection wells) or 40 CFR 146.66 and 146.70(b) (for hazardous waste injection wells).

History: Effective June 1, 1983; amended effective November 1, 1989.

General Authority: NDCC 23-20.3-03, 61-28-04, 61-28.1-03

Law Implemented: NDCC 23-20.3-03, 61-28-04, 61-28.1-03

33-25-01-12. Plugging and abandonment.

1. Any Class I permit shall include, and any Class V permit may include, a plan for plugging and abandonment which shall be incorporated into the permit as a condition to ensure that movement of fluids either into an underground source of drinking water or between underground sources of drinking water is not allowed.
2. Temporary intermittent cessation of injection operations is not abandonment.
3. The permittee shall notify the director at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.
4. Prior to granting approval for plugging and abandonment of a Class I well, the director shall consider the plan submitted by the operator which contains the information listed in 40 CFR 146.14(c) (for nonhazardous waste injection wells) or 40 CFR 146.71(a)(4) and 146.72(a) (for hazardous waste injection wells).

History: Effective June 1, 1983; amended effective November 1, 1989.

General Authority: NDCC 23-20.3-03, 61-28-04, 61-28.1-03

Law Implemented: NDCC 23-20.3-03, 61-28-04, 61-28.1-03

33-25-01-13. Mechanical integrity. A permit for any Class I well or injection project which lacks mechanical integrity shall include, and for any Class V well may include, a condition prohibiting injection operations until the permittee shows to the satisfaction of the director under ~~40 CFR 146.08~~ that the well has mechanical integrity.

1. A permit for any Class I well shall include, and for any Class V well may include, a condition prohibiting injection operations until the permittee shows to the satisfaction of the director that the well has mechanical integrity.
2. An injection well has mechanical integrity if:
 - a. There is no significant leak in the casing, tubing, or packer; and
 - b. There is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.
3. The mechanical integrity of a Class I nonhazardous waste well must be demonstrated using the methods listed in 40 CFR 146.8(b), (c), (d), and (e). The director may also allow the use of a radioactive tracer survey (timed run method) for detecting leaks in the tubing, casing, or packer and for demonstrating the absence of fluid movement behind the casing (where the injection zone immediately underlies the lowermost underground source of drinking water on a case-by-case basis);
4. The mechanical integrity of a Class I hazardous waste injection as defined by 40 CFR 146.8 must be demonstrated as established by 40 CFR 146.68(d); and
5. The mechanical integrity of a Class I nonhazardous waste injection well must be demonstrated at least once every five years and whenever there has been a well workover.

History: Effective June 1, 1983; amended effective November 1, 1989.

General Authority: NDCC 23-30.3-03, 61-28-04, 61-28.1-03

Law Implemented: NDCC 23-20.3-03, 61-28-04, 61-28.1-03

33-25-01-14. Area of review. The area of review for each injection well or each field, project, or area of the state shall be determined according to 40 CFR ~~146.06~~ 146.6 (for nonhazardous waste injection wells) or 40 CFR 146.63 (for hazardous waste injection wells).

History: Effective June 1, 1983; amended effective November 1, 1989.

General Authority: NDCC 23-20.3-03, 61-28-04

Law Implemented: NDCC 23-20.3-03, 61-28-04

33-25-01-15. Schedules of compliance.

1. The compliance schedule of a Class I nonhazardous waste injection well or a Class V injection well must require compliance as soon as possible, and not later than three years after the effective date of the permit.
2. If the schedule of compliance is for more than one year, then interim requirements and completion dates (not to exceed one year) must be incorporated into the compliance schedule and permit.
3. No later than thirty days following each interim and final date, the permittee shall submit progress reports to the director.
4. No owner or operator of a Class I hazardous waste injection well may begin injection until all corrective action as required in 40 CFR 146.64 has been taken.

History: Effective June 1, 1983; amended effective November 1, 1989.

General Authority: NDCC 23-20.3-03, 61-28-04, 61-28.1-03

Law Implemented: NDCC 23-20.3-03, 61-28-04, 61-28.1-03

33-25-01-17. Requirements for hazardous waste injection wells. The owner or operator of all wells injecting hazardous waste shall comply with the requirements for hazardous waste management facilities as specified in 40 CFR ~~144.45~~ 144.14, 146 subpart G, and 148.

History: Effective June 1, 1983; amended effective November 1, 1989.

General Authority: NDCC 23-20.3-04, 23-20.3-05, 61-28-04

Law Implemented: NDCC 23-20.3-04, 23-20.3-05, 61-28-04

33-25-01-18. Class IV wells. All Class IV wells are prohibited except wells used to inject contaminated ground water that has been treated and is being injected into the same formation from which it was drawn if such injection is approved by the director in accordance with 40 CFR 144.13(c).

History: Effective June 1, 1983; amended effective November 1, 1989.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 61-28-04, 61-28-06

DECEMBER 1989

STAFF COMMENT: Chapter 33-24-08 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-24-08
TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS
FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

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33-24-08-01. Applicability (technical standards and corrective action).

1. The requirements of this chapter apply to all owners and operators of an underground storage tank system as defined in section 33-24-08-03, except as otherwise provided in subsections 2, 3, and 4. Any underground storage tank system listed in subsection 3 must meet the requirements of section 33-24-08-02.

2. The following underground storage tank systems are excluded from the requirements of this chapter:
 - a. Any underground storage tank system holding hazardous wastes listed or identified under North Dakota Century Code chapter 20-20.3, or a mixture of such hazardous waste and other regulated substances;
 - b. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the Clean Water Act;
 - c. Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
 - d. Any underground storage tank system whose capacity is one hundred ten gallons [416.39 liters] or less;
 - e. Any underground storage tank system that contains a de minimus concentration of regulated substances; or
 - f. Any emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.
3. Deferrals. Sections 33-24-08-10 through 33-24-08-43 and sections 33-24-08-60 through 33-24-08-64 do not apply to any of the following types of underground storage tank systems:
 - a. Wastewater treatment tank systems;
 - b. Any underground storage tank systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 [42 U.S.C. 2011 and following];
 - c. Any underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 CFR part 50, appendix A;
 - d. Airport hydrant fuel distribution systems; and
 - e. Underground storage tank systems with field-constructed tanks.
4. Deferrals. Sections 33-24-08-30 through 33-24-08-35 do not apply to any underground storage tank system that stores fuel solely for use by emergency power generators.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-02. Interim prohibition for deferred underground storage tank systems.

1. No person may install an underground storage tank system listed in subsection 3 of section 33-24-08-01 for the purpose of storing regulated substances unless the underground storage tank system (whether of single-wall or double-wall construction):
 - a. Will prevent releases due to corrosion or structural failure for the operational life of the underground storage tank system;
 - b. Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and
 - c. Is constructed or lined with material that is compatible with the stored substance.
2. Notwithstanding subsection 1, an underground storage tank system without corrosion protection may be 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. Owners and operators must maintain records that demonstrate compliance with the requirements of this subsection for the remaining life of the tank. (NOTE: The National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used as guidance for complying with this subsection.)

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-03. Definitions (technical standards and corrective action).

1. "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an underground storage tank system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank system.
2. "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an underground storage tank.

3. "Belowground release" means any release to the subsurface of the land and the ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.
4. "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.
5. "Cathodic protection" is 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.
6. "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.
7. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
8. "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the underground storage tank.
9. "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual underground storage tank system, the piping that joins two underground storage tank systems should be allocated equally between them.
10. "Consumptive use" with respect to heating oil means consumed on the premises.
11. "Corrosion expert" means a person who, by reason of thorough knowledge of the 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 of corrosion control on buried or submerged piping systems and metal tanks. Such a person must

be accredited or certified as being qualified by the national association of corrosion engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

12. "Department" means the North Dakota state department of health and consolidated laboratories charged with the administration and enforcement of this chapter.
13. "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate underground storage tank systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the underground storage tank system (e.g., tank from piping).
14. "Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.
15. "Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.
16. "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 federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,
 - b. Either, (1) a continuous onsite physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.
17. "Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland, and nurseries with growing operations.
18. "Flowthrough 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 during the operation of the process. Flowthrough process tanks do

not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or byproducts from the production process.

19. "Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).
20. "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.
21. "Hazardous substance underground storage tank system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum underground storage tank system.
22. "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including navy special fuel oil and bunker c); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.
23. "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.
24. "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.
25. "Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.
26. "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, and is typically used in the operation of a motor engine.

27. "New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988. (See also "existing tank system".)
28. "Noncommercial purposes" with respect to motor fuel means not for resale.
29. "On the premises where stored" with respect to heating oil means underground storage tank systems located on the same property where the stored heating oil is used.
30. "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 sections 33-24-08-60 through 33-24-08-64.
31. "Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank system.
32. "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.
33. "Owner" means:
 - a. In the case of an underground storage tank system in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank system used for storage, use, or dispensing of regulated substances; and
 - b. In the case of any underground storage tank system in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use.
34. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.
35. "Petroleum underground storage tank system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimus quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

36. "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials.
37. "Pipeline facilities (including gathering lines)" are new and existing pipe rights of way and any associated equipment, facilities, or buildings.
38. "Regulated substance" means:
 - a. Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under North Dakota Century Code chapter 23-20.3; and
 - b. Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit [10 degrees Celsius] and fourteen and seven-tenths pounds per square inch [101.3 kilopascals] 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.
39. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.
40. "Release detection" means determining whether a release of a regulated substance has occurred from the underground storage tank system into the environment or into the interstitial space between the underground storage tank system and its secondary barrier or secondary containment around it.
41. "Repair" means to restore a tank or underground storage tank system component that has caused a release of product from the underground storage tank system.
42. "Residential tank" is a tank located on property used primarily for dwelling purposes.
43. "SARA" means the Superfund Amendments and Reauthorization Act of 1986.
44. "Septic tank" is a watertight 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.

45. "Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water runoff resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.
46. "Surface impoundment" is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials) that is not an injection well.
47. "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.
48. "Underground area" means an underground room, such as a basement, cellar, shaft, or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.
49. "Underground release" means any belowground release.
50. "Underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. This term does not include any:
 - a. Farm or residential tank of one thousand one hundred gallons [4163.94 liters] or less capacity used for storing motor fuel for noncommercial purposes;
 - b. Tank used for storing heating oil for consumptive use on the premises where stored;
 - c. Septic tank;
 - d. Pipeline facility (including gathering lines) regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968 [49 U.S.C. App. 1671, et seq.];
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979 [49 U.S.C. App. 2001, et seq.]; or
 - (3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the

law referred to in paragraph 1 or 2 of this subdivision;

- e. Surface impoundment, pit, pond, or lagoon;
- f. Storm water or wastewater collection system;
- g. Flowthrough process tank;
- h. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- i. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" does not include any pipes connected to any tank which is described in subdivisions a through i on this subsection.

- 51. "Underground storage tank system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.
- 52. "Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overflow controls to improve the ability of an underground storage tank system to prevent the release of product.
- 53. "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-04. [Reserved]

33-24-08-05. [Reserved]

33-24-08-06. [Reserved]

33-24-08-07. [Reserved]

33-24-08-08. [Reserved]

33-24-08-09. [Reserved]

33-24-08-10. Performance standards for new underground storage tank systems. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the underground storage tank system is used to store regulated substances, all owners and operators of new underground storage tank systems must meet the following requirements:

1. 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 recognized association or independent testing laboratory as specified below:
 - a. The tank is constructed of fiberglass-reinforced plastic (NOTE: The following industry codes may be used to comply with this subdivision: Underwriters Laboratory Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriters 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.");
 - b. The tank is constructed of steel and cathodically protected in the following manner:
 - (1) The tank is coated with a suitable dielectric material;
 - (2) Field-installed cathodic protection systems are designed by a corrosion expert;
 - (3) Impressed current systems are designed to allow determination of current operating status as required in subsection 3 of section 33-24-08-21; and
 - (4) Cathodic protection systems are operated and maintained in accordance with section 33-24-08-21 or according to guidelines established by the department (NOTE: The following codes and standards may be used to comply with this subdivision: Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks"; Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks"; 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 National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems", and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids".);

- c. The tank is constructed of a steel-fiberglass-reinforced-plastic composite (NOTE: The following industry codes may be used to comply with this subdivision: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks", or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks".)
 - d. The tank is constructed of metal without additional corrosion protection measures provided that:
 - (1) The tank is installed at a site that is determined by a corrosion expert not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
 - (2) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph 1 of this subdivision for the remaining life of the tank; or
 - e. The tank construction and corrosion protection are determined by the department 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 subdivisions a through d.
2. 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:
- a. The piping is constructed of fiberglass-reinforced plastic (NOTE: The following codes and standards may be used to comply with this subdivision: Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe"; Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable

and Combustible and LP Gas"; Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors".)

- b. The piping is constructed of steel and cathodically protected in the following manner:
- (1) The piping is coated with a suitable dielectric material;
 - (2) Field-installed cathodic protection systems are designed by a corrosion expert;
 - (3) Impressed current systems are designed to allow determination of current operating status as required in subsection 3 of section 33-24-08-21; and
 - (4) Cathodic protection systems are operated and maintained in accordance with section 33-24-08-21 or guidelines established by the department (NOTE: The following codes and standards may be used to comply with this subdivision: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems"; American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems".);
- c. The piping is constructed of metal without additional corrosion protection measures provided that:
- (1) 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
 - (2) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph 1 for the remaining life of the piping (NOTE: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems", may be used to comply with this subdivision.);

- d. The piping construction and corrosion protection are determined by the department 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 subdivisions a through c.
3. Spill and overfill prevention equipment.
 - a. Except as provided in subdivision b, to prevent spilling and overfilling associated with product transfer to the underground storage tank system, owners and operators must use the following spill and overfill prevention equipment:
 - (1) 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
 - (2) Overfill prevention equipment that will:
 - (a) Automatically shut off flow into the tank when the tank is no more than ninety-five percent full; or
 - (b) Alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level alarm.
 - b. Owners and operators are not required to use the spill and overfill prevention equipment specified in subdivision a if:
 - (1) Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in paragraphs 1 and 2 of subdivision a; or
 - (2) The underground storage tank system is filled by transfers of no more than twenty-five gallons [94.63 liters] at one time.
 4. Installation. All tanks and piping must be properly installed in accordance with a code of 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 in the following codes may be used to comply with the requirements of this subsection: American Petroleum Institute Publication 1615, "Installation of

Underground Petroleum Storage System"; Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or American National Standards Institute Standard B31.3, "Petroleum Refinery Piping", and American National Standards Institute Standard B31.4, "Liquid Petroleum Transportation Piping System".)

5. 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 with subsection 4 by providing a certification of compliance on the underground storage tank notification form in accordance with section 33-24-08-12:
 - a. The installer has been certified by the tank and piping manufacturers;
 - b. The installer has been certified or licensed by the department;
 - c. The installation has been inspected and certified by a registered professional engineer with education and experience in underground storage tank system installation;
 - d. The installation has been inspected and approved by the department;
 - e. All work listed in the manufacturer's installation checklists has been completed; or
 - f. The owner and operator have complied with another method for ensuring compliance with subsection 4 that is determined by the department to be no less protective of human health and the environment.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-11. Upgrading of existing underground storage tank systems.

1. Alternatives allowed. Not later than December 22, 1998, all existing underground storage tank systems must comply with one of the following requirements:
 - a. New underground storage tank system performance standards under section 33-24-08-10;
 - b. The upgrading requirements in subsections 2 through 4; or

- c. Closure requirements under sections 33-24-08-60 through 33-24-08-64, including applicable requirements for corrective action under sections 33-24-08-50 through 33-24-08-57.
2. 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:
 - a. Interior lining. A tank may be upgraded by internal lining if:
 - (1) The lining is installed in accordance with the requirements of section 33-24-08-23; and
 - (2) Within ten years after lining, and every five 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.
 - b. Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of paragraphs 2, 3, and 4 of subdivision b of subsection 1 of section 33-24-08-10 and the integrity of the tank is ensured using one of the following methods:
 - (1) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system;
 - (2) The tank has been installed for less than ten years and is monitored monthly for releases in accordance with subsections 4 through 8 of section 33-24-08-33;
 - (3) The tank has been installed for less than ten years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of subsection 3 of section 33-24-08-33. The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three and six months following the first operation of the cathodic protection system; or
 - (4) The tank is assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than paragraphs 1 through 3.

c. Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

- (1) The lining is installed in accordance with the requirements of section 33-24-08-23; and
- (2) The cathodic protection system meets the requirements of paragraphs 2, 3, and 4 of subdivision b of subsection 1 of section 33-24-08-10.

(NOTE: The following codes and standards may be used to comply with this section: American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection"; National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"; and American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems".)

3. Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of paragraphs 2, 3, and 4 of subdivision b of subsection 2 of section 33-24-08-10.

(NOTE: The codes and standards listed in the note following subdivision b of subsection 2 of section 33-24-08-10 may be used to comply with this requirement.)

4. Spill and overflow prevention equipment. To prevent spilling and overflowing associated with product transfer to the underground storage tank system, all existing underground storage tank systems must comply with new underground storage tank system spill and overflow prevention equipment requirements specified in subsection 3 of section 33-24-08-10.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-12. Notification requirements.

1. Any owner who brings an underground storage tank system into use after May 8, 1986, must within thirty days of bringing

such tank into use, submit, in the form prescribed in appendix I, a notice of existence of such tank system to the department.

(NOTE: Owners and operators of underground storage tank systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the designated state or local agency in accordance with the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, on a form published by the environmental protection agency on November 8, 1985, (50 federal register 46602) unless notice was given pursuant to section 103(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Owners and operators who have not complied with the notification requirements may use portions I through VI of the notification form contained in appendix I.)

2. Owners required to submit notices under subsection 1 must provide notices to the department 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 of operation.
3. Notices required to be submitted under subsection 1 must provide all of the information in sections 1 through 9 of the prescribed form for each tank for which notice must be given.
4. All owners and operators of new underground storage tank systems must certify in the notification form compliance with the following requirements:
 - a. Installation of tanks and piping under subsection 5 of section 33-24-08-10;
 - b. Cathodic protection of steel tanks and piping under subsections 1 and 2 of section 33-24-08-10;
 - c. Financial responsibility under sections 33-24-08-80 through 33-24-08-101; and
 - d. Release detection under sections 33-24-08-31 and 33-24-08-32.
5. 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 subsection 1. The form provided in appendix II may be used to comply with this requirement.
6. All owners and operators of new underground storage tank systems must ensure that the installer certifies in the

notification form that the methods used to install the tanks and piping complies with the requirements in subsection 4 of section 33-24-08-10.

History: Effective December 1, 1989.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

(CONTINUED ON NEXT PAGE)

33-24-08-13. [Reserved]

33-24-08-14. [Reserved]

33-24-08-15. [Reserved]

33-24-08-16. [Reserved]

33-24-08-17. [Reserved]

33-24-08-18. [Reserved]

33-24-08-19. [Reserved]

33-24-08-20. Spill and overfill control.

1. 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 transfer 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 this subsection. 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".)

2. The owner and operator must report, investigate, and clean up any spills and overfills in accordance with section 33-24-08-43.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-21. Operation and maintenance of corrosion protection. All owners and operators of steel underground storage tank systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the underground storage tank system is used to store 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 underground storage tank 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 six months of installation and at least every three years thereafter or according to another reasonable timeframe established by the department;
 - 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, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems", may be used to comply with subdivision b.)
3. Underground storage tank systems with impressed current cathodic protection systems must also be inspected every sixty days to ensure the equipment is running properly; and
4. For underground storage tank systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with section 33-24-08-24) to demonstrate compliance with the performance standards. These records must provide the following:
 - a. The results of the last three inspections required in subsection 3; and
 - b. The results of testing from the last two inspections required in subsection 2.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-22. Compatibility. Owners and operators must use an underground storage tank system made of or lined with materials that are compatible with the substance stored in the underground storage tank system. (NOTE: Owners and operators storing alcohol blends may use the following codes to comply with the requirements: American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and

Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methonal/Cosolvent Blends at Distribution Terminals and Service Stations".)

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-23. Repairs allowed. Owners and operators of underground storage tank systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the underground storage tank system is used to store regulated substances. The repairs must meet the following requirements:

1. Repairs to underground storage tank 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 this subsection: 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 the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection".);
2. 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;
3. Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications;
4. Repaired tanks and piping must be tightness tested in accordance with subsection 3 of section 33-24-08-33 and subsection 2 of section 33-24-08-34 within thirty days following the date of the completion of the repair except as provided in subdivisions a through c:
 - a. The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;

- b. The repaired portion of the underground storage tank system is monitored monthly for releases in accordance with a method specified in subsections 4 through 8 of section 33-24-08-33; or
 - c. Another test method is used that is determined by the department to be no less protective of human health and the environment than those listed above.
5. Within six months following the repair of any cathodically protected underground storage tank system, the cathodic protection system must be tested in accordance with subsections 2 and 3 of section 33-24-08-21 to ensure that it is operating properly; and
6. Underground storage tank system owners and operators must maintain records of each repair for the remaining operating life of the underground storage tank system that demonstrate compliance with the requirements.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-24. Reporting and recordkeeping. Owners and operators of underground storage tank systems must cooperate fully with inspections, monitoring, and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to North Dakota Century Code section 23-30.3-04.1.

1. Reporting. Owners and operators must submit the following information to the department:
 - a. Notification for all underground storage tank systems (section 33-24-08-12), which includes certification of installation for new underground storage tank systems (subsection 5 of section 33-24-08-10);
 - b. Reports of all releases including suspected releases (section 33-24-08-40), spills and overfills (section 33-24-08-43), and confirmed releases (section 33-24-08-51);
 - c. Corrective actions planned or taken including initial abatement measures (section 33-24-08-52), initial site characterization (section 33-24-08-53), free product removal (section 33-24-08-54), investigation of soil and ground water cleanup (section 33-24-08-55), and corrective action plan (section 33-24-08-56); and

- d. A notification before permanent closure or change in service (section 33-24-08-61).
2. **Recordkeeping.** Owners and operators must maintain the following information:
 - a. A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (subdivision d of subsection 1 of section 33-24-08-10, subdivision c of subsection 2 of section 33-24-08-10);
 - b. Documentation of operation of corrosion protection equipment (section 33-24-08-21);
 - c. Documentation of underground storage tank system repairs (subsection 6 of section 33-24-08-23);
 - d. Recent compliance with release detection requirements (section 33-24-08-35); and
 - e. Results of the site investigation conducted at permanent closure (section 33-24-08-64).
 3. **Availability and maintenance of records.** Owners and operators must keep the records required either:
 - a. At the underground storage tank site and immediately available for inspection by the department;
 - b. At a readily available alternative site and be provided for inspection to the department upon request; or
 - c. In case of permanent closure records required under section 33-24-08-64, owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-25. [Reserved]

33-24-08-26. [Reserved]

33-24-08-27. [Reserved]

33-24-08-28. [Reserved]

33-24-08-29. [Reserved]

33-24-08-30. General release detection requirements for all underground storage tank systems.

1. Owners and operators of new and existing underground storage tank systems must provide a method, or combination of methods, of release detection that:
 - a. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;
 - b. 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
 - c. Meets the performance requirements in section 33-24-08-33 or 33-24-08-34, 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 date, must be capable of detecting the leak rate or quantity specified for that method in subsections 2, 3, and 4 of section 33-24-08-33 or subsections 1 and 2 of section 33-24-08-34 with a probability of detection of ninety-five hundredths and a probability of false alarm of five hundredths.
2. When a release detection method operated in accordance with the performance standards in sections 33-24-08-33 and 33-24-08-34 indicates a release may have occurred, owners and operators must notify the department in accordance with sections 33-24-08-40 through 33-24-08-43.
3. Owners and operators of all underground storage tank systems must comply with the release detection requirements of this section by December twenty-second of the year listed in the following table:

Schedule for Phase-in of Release Detection

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown.	RD	P			
1965-69		P/RD			
1970-74		P	RD		
1975-79		P		RD	
1980-88		P			RD

New tanks (after December 22) immediately upon installation.

P = Must begin release detection for all pressurized piping in accordance with subdivision a. of subsection 2. of section 33-24-08-31 and subdivision d. of subsection 2. of section 33-24-08-32.

RD = Must begin release detection for tanks and suction piping in accordance with subsection 1. of section 33-24-08-31, subdivision b. of subsection 2. of section 33-24-08-31, and section 33-24-08-32.

- Any existing underground storage tank system that cannot apply a method of release detection that complies with the requirements of this section must complete the closure procedures in sections 33-24-08-60 through 33-24-08-64 by the date on which release detection is required for that underground storage tank system under subsection 3.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-31. Release detection requirements for petroleum underground storage tank systems. Owners and operators of petroleum underground storage tank systems must provide release detection for tanks and piping as follows:

1. Tanks. Tanks must be monitored at least every thirty days for releases using one of the methods listed in subsections 4 through 8 of section 33-24-08-33 except that:
 - a. Underground storage tank systems that meet the performance standards in section 33-24-08-10 or 33-24-08-11, and the monthly inventory control requirements in subsection 1 or 2 of section 33-24-08-33, may use tank tightness testing (conducted in accordance with subsection 3 of section 33-24-08-33) at least every five years until December 22, 1998, or until ten years after the tank is installed or upgraded under subsection 2 of section 33-24-08-11, whichever is later;
 - b. Underground storage tank systems that do not meet the performance standards in section 33-24-08-10 or 33-24-08-11 may use monthly inventory controls (conducted in accordance with subsection 1 or 2 of section 33-24-08-33) and annual tank tightness testing (conducted in accordance with subsection 3 of section 33-24-08-33) until December 22, 1998, when the tank must be upgraded under section 33-24-08-11 or permanently closed under section 33-24-08-61; and
 - c. Tanks with capacity of five hundred fifty gallons [2081.98 liters] or less may use weekly tank gauging (conducted in accordance with subsection 2 of section 33-24-08-33).
2. Piping. Underground piping that routinely contains regulated substances 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:
 - (1) Be equipped with an automatic line leak detector conducted in accordance with subsection 1 of section 33-24-08-34; and
 - (2) Have an annual line tightness test conducted in accordance with subsection 2 of section 33-24-08-34 or have monthly monitoring conducted in accordance with subsection 3 of section 33-24-08-34.
 - b. Suction piping. Underground piping that conveys regulated substances under suction must either have line tightness test conducted at least every three years and in accordance with subsection 2 of section 33-24-08-34, or

use a monthly monitoring method conducted in accordance with subsection 3 of section 33-24-08-34. No release detection is required for suction piping that is designed and constructed to meet the following standards:

- (1) The below-grade piping operates at less than atmospheric pressure;
- (2) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
- (3) Only one check valve is included in each suction line;
- (4) The check valve is located directly below and as close as practical to the suction pump; and
- (5) A method is provided that allows compliance with paragraphs 2 through 4 to be readily determined.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-32. Release detection requirements for hazardous substance underground storage tank systems. Owners and operators of hazardous substance underground storage tank systems must provide release detection that meets the following requirements:

1. Release detection at existing underground storage tank systems must meet the requirements for petroleum underground storage tank systems in section 33-24-08-31. By December 22, 1998, all existing hazardous substance underground storage tank systems must meet the release detection requirements for new systems in subsection 2.
2. Release detection at new hazardous substance underground storage tank systems must meet the following requirements:
 - a. Secondary containment systems must be designed, constructed, and installed:
 - (1) Contain regulated substances released from the tank system until they are detected and removed;
 - (2) Prevent the release of regulated substances to the environment at any time during the operational life of the underground storage tank system; and
 - (3) Be checked for evidence of a release at least every thirty days.

(NOTE: The provisions of section 33-24-05-106 may be used to comply with this subsection.)

- b. Double-walled tanks must be designed, constructed, and installed to:
 - (1) Contain a release from any portion of the inner tank within the outer wall; and
 - (2) Detect the failure of the inner wall.
- c. External liners (including vaults) must be designed, constructed, and installed to:
 - (1) Contain one hundred percent of the capacity of the largest tank within its boundary;
 - (2) Prevent the interference of precipitation or ground water intrusion with the ability to contain or detect a release of regulated substances; and
 - (3) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).
- d. Underground piping must be equipped with secondary containment that satisfies the requirements of subdivision a of subsection 2 (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with subsection 1 of section 33-24-08-34; or
- e. Other methods of release detection may be used if owners and operators:
 - (1) Demonstrate to the department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in subsections 2 through 8 of section 33-24-08-33 can detect a release of petroleum;
 - (2) Provide information to the department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the underground storage tank site; and

- (3) Obtain approval from the department to use the alternate release detection method before the installation and operation of the new underground storage tank system.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-33. Methods of release detection for tanks. Each method of release detection for tanks used to meet the requirements of section 33-24-08-31 must be conducted in accordance with the following:

1. Inventory control. Product inventory control (for another test of equivalent performance) must be conducted monthly to detect a release of at least one percent of flowthrough plus one hundred thirty gallons [492.10 liters] on a 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 [3.05 millimeters];
 - 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 [0.30 meters] of the tank bottom;
 - e. Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of six cubic inches [98.32 milliliters] for every five gallons [18.93 liters] 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 [3.05 millimeters] at least once a month.

(NOTE: Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets", may be used, where applicable, as guidance in meeting the requirements.)

2. Manual tank gauging. Manual gauging must meet the following requirements:

- a. Tank liquid level measurements are taken at the beginning and ending of a period of at least thirty-six hours during which no liquid 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 the 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 [3.05 millimeters];
- d. A leak is suspected and subject to the requirements of sections 33-24-08-40 through 33-24-08-43 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity	Weekly Standard (one test)	Monthly Standard (average of four tests)
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; and

- e. Only tanks of five hundred fifty gallons [2081.98 liters] or less nominal capacity may use this as the sole method of release detection. Tanks of five hundred fifty-one to two thousand gallons [2085.76 to 7570.80 liters] may use the method in place of manual inventory control in subsection 1 of section 33-24-08-33. Tanks of greater than two thousand gallons [7570.80 liters] nominal capacity may not use this method to meet the requirements of sections 33-24-08-40 through 33-24-08-45.
3. Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a one-tenth gallon [.38 liter] 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 tests for the loss of product and conducts inventory control must meet the following requirements:
 - a. The automatic product level monitor test can detect a two-tenths gallon [.76 liter] 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 subsection 1 of section 33-24-08-33.

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 of 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 thirty 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 the underground storage tank excavation zone, the site is assessed to ensure compliance with the requirements in subdivisions a through d and to establish the number and 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 twenty feet [6.07 meters] from the ground surface and the hydraulic conductivity of the soils between the underground storage tank system and the monitoring wells or devices is not less than one one-hundredths centimeter per second (e.g., the soil should consist of gravels, coarse to medium sands, 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 must be sealed from the ground surface to the top of the filter pack;
 - e. Monitoring wells or devices intercept the excavation zone or are as 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 [3.05 millimeters] of free product on top of the ground water in the monitoring wells;
 - g. Within and immediately below the underground storage tank system excavation zone, the site is assessed to ensure compliance with the requirements in subdivisions a through e 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 underground storage tank system and a secondary barrier immediately around or beneath it may be used, but only if the 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 underground storage tank systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;
- (NOTE: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.)
- b. For underground storage tank systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the underground storage tank system and the secondary barrier;
- (1) The secondary barrier around or beneath the underground storage tank system consists of

artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} centimeter per second for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

- (2) The barrier is compatible with the regulated substance stored so that a release from the underground storage tank system will not cause a deterioration of the barrier allowing a release to pass through undetected;
 - (3) 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;
 - (4) 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 thirty days;
 - (5) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a twenty-five-year floodplain, unless the barrier and monitoring designs are for use under such conditions; and
 - (6) 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, 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 two-tenths gallon [.76 liter] per hour leak rate or a release of one hundred fifty gallons [567.81 liters] within a month with a probability of detection of ninety-five hundredths and a probability of false alarm of five one-hundredths; or
- b. The department may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subsections 3 through 8. In comparing methods, the department shall consider the size of release the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the

department on its use to ensure the protection of human health and the environment.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-02.3-04.1

33-24-08-34. Methods of release detection for piping. Each method of release detection for piping used to meet the requirements of section 33-24-08-31 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 three gallons [11.36 liters] per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.
2. Line tightness testing. A periodic test of piping may be conducted only if can detect a one-tenth gallon [.38 liter] per hour leak rate at one and one-half times the operating pressure.
3. Applicable tank methods. Any of the methods in subsections 5 through 8 of section 33-24-08-33 may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-35. Release detection recordkeeping. All underground storage tank system owners and operators must maintain records in accordance with section 33-24-08-24 demonstrating compliance with all applicable requirements of sections 33-24-08-30 through 33-24-08-35. 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 five years or for another reasonable period of time determined by the department, from the date of installation;
2. The results of any sampling, testing, or monitoring must be maintained for at least one year, or for another reasonable period of time determined by the department, except that the

results of tank tightness testing conducted in accordance with subsection 3 of section 33-24-08-33 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 onsite must be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the department. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-36. [Reserved]

33-24-08-37. [Reserved]

33-24-08-38. [Reserved]

33-24-08-39. [Reserved]

33-24-08-40. Reporting of suspected releases. Owners and operators of underground storage tank systems must report to the department within twenty-four hours, or another reasonable time period specified by the department, and follow the procedures in section 33-24-08-42 for any of the following conditions:

1. The discovery by owners and operators or others of released regulated substances at the underground storage tank 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 underground storage tank 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 sections 33-24-08-31 and 33-24-08-32 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.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-41. Investigation due to offsite impacts. When required by the department, owners and operators of underground storage tank systems must follow the procedures in section 33-24-08-42 to determine if the underground storage tank system is the source of offsite impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the department or brought to its attention by another party.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-42. Release investigation and confirmation steps. Unless corrective action is initiated in accordance with sections 33-24-08-50 through 33-24-08-57, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under section 33-24-08-40 within seven days, or another reasonable time period specified by the department, using either the following steps or another procedure approved by the department:

1. System test. Owners and operators must conduct tests (according to the requirements for tightness testing in subsection 3 of section 33-24-08-33 and subsection 2 of section 33-24-08-34) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.
 - a. Owners and operators must repair, replace, or upgrade the underground storage tank system, and begin corrective action in accordance with sections 33-24-08-50 through 33-24-08-57 if the test results for the system, tank, or delivery piping indicate that a leak exists.
 - b. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

- c. Owners and operators must conduct a site check as described in subsection 2 if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.
2. Site check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the underground storage tank site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.
 - a. If the test results for the excavation zone or the underground storage tank site indicate that a release has occurred, owners and operators must begin corrective action in accordance with sections 33-24-08-50 through 33-24-08-57.
 - b. If the test results for the excavation zone or the underground storage tank site do not indicate that a release has occurred, further investigation is not required.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-43. Reporting and cleanup of spills and overfills.

1. Owners and operators of underground storage tank systems must contain and immediately clean up a spill or overfill and report to the department within twenty-four hours, or another reasonable time period specified by the department, and begin corrective action in accordance with sections 33-24-08-50 through 33-24-08-57 in the following cases:
 - a. Spill or overfill of petroleum that results in a release to the environment that exceeds twenty-five gallons [94.63 liters] or another reasonable amount specified by the department, or that causes a sheen on nearby surface water; and
 - b. Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under the Comprehensive Environmental Response, Compensation, and Liability Act [40 CFR 302].

2. Owners and operators of underground storage tank systems must contain and immediately clean up a spill or overflow of petroleum that is less than twenty-five gallons [94.63 liters] or another reasonable amount specified by the department, and a spill or overflow of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within twenty-four hours, or another reasonable time period established by the department, owners and operators must immediately notify the department.

(NOTE: A release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within twenty-four hours) to the National Response Center under sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and to appropriate state and local authorities under title III of the Superfund Amendments and Reauthorization Act of 1986.)

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-44. [Reserved]

33-24-08-45. [Reserved]

33-24-08-46. [Reserved]

33-24-08-47. [Reserved]

33-24-08-48. [Reserved]

33-24-08-49. [Reserved]

33-24-08-50. General release response and corrective action for underground storage tank systems containing petroleum or hazardous substances. Owners and operators of petroleum or hazardous substance underground storage tank systems must, in response to a confirmed release from the underground storage tank system, comply with the requirements of this section except for underground storage tanks excluded under subsection 2 of section 33-24-08-01 and underground

storage tank systems subject to the hazardous waste provisions of North Dakota Century Code chapter 23-20.3.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-51. Initial response. Upon confirmation of a release in accordance with section 33-24-08-42 or after a release from the underground storage tank system is identified in any other manner, owners and operators must perform the following initial response actions within twenty-four hours of a release or within another reasonable period of time determined by the department:

1. Report the release to the department (e.g., by telephone or electronic mail);
2. Take immediate action to prevent any further release of the regulated substance into the environment; and
3. Identify and mitigate fire, explosion, and vapor hazards.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-52. Initial abatement measures and site check.

1. Unless directed to do otherwise by the department, owners and operators must perform the following abatement measures:
 - a. Remove as much of the regulated substance from the underground storage tank system as is necessary to prevent further release to the environment;
 - b. Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water;
 - c. Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the underground storage tank excavation zone and entered into subsurface structures (such as sewers or basements);
 - d. Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or

disposal of soils, the owner and operator must comply with applicable state and local requirements;

- e. Measure for the presence of a release where contamination is most likely to be present at the underground storage tank site, unless the presence and source of the release have been confirmed in accordance with the site check required by subsection 2 of section 33-24-08-42 or the closure site assessment of subsection 1 of section 33-24-08-62. In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to ground water, and other factors as appropriate for identifying the presence and source of the release; and
 - f. Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with section 33-24-08-54.
2. Within twenty days after release confirmation, or within another reasonable period of time determined by the department, owners and operators must submit a report to the department summarizing the initial abatement steps taken under subsection 1 and any resulting information or data.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-53. Initial site characterization.

1. Unless directed to do otherwise by the department, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in sections 33-24-08-50 and 33-24-08-51. This information must include, but is not necessarily limited to, the following:
 - a. Data on the nature and estimated quantity of release;
 - b. Data from available sources or site investigations, or both, concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;
 - c. Results of the site check required under subdivision e of subsection 1 of section 33-24-08-52; and

- d. Results of the free product investigations required under subdivision f of subsection 1 of section 33-24-08-52, to be used by owners and operators to determine whether free product must be recovered under section 33-24-08-54.
2. Within forty-five days of release confirmation or another reasonable period of time determined by the department, owners and operators must submit the information collected in compliance with subsection 1 to the department in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the department.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-54. Free product removal. At sites where investigations under subdivision f of subsection 1 of section 33-24-08-52 indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the department while continuing, as necessary, any actions initiated under sections 33-24-08-51 through 33-24-08-53, or preparing for actions required under sections 33-24-08-55 and 33-24-08-56. In meeting the requirements of this section, owners and operators must:

1. Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges, or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations;
2. Use abatement of free product migration as a minimum objective for the design of the free product removal systems;
3. Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
4. Unless directed to do otherwise by the department, prepare and submit to the department, within forty-five days after confirming a release, a free product removal report that provides at least the following information:
 - a. The name of the persons responsible for implementing the free product removal measures;
 - b. The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

- c. The type of free product recovery system used;
- d. Whether any discharge will take place onsite or offsite during the recovery operation and where this discharge will be located;
- e. The type of treatment applied to, and the effluent quality expected from, any discharge;
- f. The steps that have been or are being taken to obtain necessary permits for any discharge; and
- g. The disposition of the recovered free product.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-55. Investigations for soil and ground water cleanup.

1. In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the ground water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:
 - a. There is evidence that ground water wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);
 - b. Free product is found to need recovery in compliance with section 33-24-08-54;
 - c. There is evidence that contaminated soils may be in contact with ground water (e.g., as found during conduct of the initial response measures or investigations required under sections 33-24-08-50 through 33-24-08-54); and
 - d. The department requests an investigation, based on the potential effects of contaminated soil or ground water on nearby surface water and ground water resources.
2. Owners and operators must submit the information collected under subsection 1 as soon as practicable or in accordance with a schedule established by the department.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-56. Corrective action plan.

1. At any point after reviewing the information submitted in compliance with sections 33-24-08-51 through 33-24-08-53, the department may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and ground water. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the department. Alternatively, owners and operators may, after fulfilling the requirements of sections 33-24-08-51 through 33-24-08-53, choose to submit a corrective action plan for responding to contaminated soil and ground water. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the department, and must modify their plan as necessary to meet this standard.
2. The department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the department should consider the following factors as appropriate:
 - a. The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
 - b. The hydrogeologic characteristics of the facility and the surrounding area;
 - c. The proximity, quality, and current and future uses of nearby surface water and ground water;
 - d. The potential effects of residual contamination on nearby surface water and ground water;
 - e. An exposure assessment; and
 - f. Any information assembled in compliance with sections 33-24-08-50 through 33-24-08-57.
3. Upon approval of the corrective action plan or as directed by the department, owners and operators must implement the plan, including modifications to the plan made by the department. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the department.
4. Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective

cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided that they:

- a. Notify the department of their intention to begin cleanup;
- b. Comply with any conditions imposed by the department, including halting cleanup or mitigating adverse consequences from cleanup activities; and
- c. Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the department for approval.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-57. Public participation.

1. For each confirmed release that requires a corrective action plan, the department must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public announcements, publication in a state register, letters to individual households, or personal contacts by field staff.
2. The department must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.
3. Before approving a corrective action plan, the department may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.
4. The department must give public notice that complies with subsection 1 if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the department.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-58. [Reserved]

33-24-08-59. [Reserved]

33-24-08-60. Temporary closure.

1. When an underground storage tank system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with section 33-24-08-21, and any release detection in accordance with sections 33-24-08-30 through 33-24-08-35. Sections 33-24-08-40 through 33-24-08-43 and sections 33-24-08-50 through 33-24-08-57 must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the underground storage tank system is empty. The underground storage tank system is empty when all materials have been removed using commonly employed practices so that no more than two and five-tenths centimeters [1 inch] of residue, or three-tenths of one percent by weight of the total capacity of the underground storage tank system, remain in the system.
2. When an underground storage tank system is temporarily closed for three months or more, owners and operators must also comply with the following requirements:
 - a. Leave vent lines open and functioning; and
 - b. Cap and secure all other lines, pumps, manways, and ancillary equipment.
3. When an underground storage tank system is temporarily closed for more than twelve months, owners and operators must permanently close the underground storage tank system if it does not meet either performance standards in section 33-24-08-10 for new underground storage tank systems or the upgrading requirements in section 33-24-08-11, except that the spill and overflow equipment requirements do not have to be met. Owners and operators must permanently close the substandard underground storage tank systems at the end of this twelve-month period in accordance with sections 33-24-08-61 through 33-24-08-64, unless the department provides an extension of the twelve-month temporary closure period. Owners and operators must complete a site assessment in accordance with section 33-24-08-62 before such an extension can be applied for.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-61. Permanent closure and changes in service.

1. At least thirty days before beginning either permanent closure or a change in service under subsections 2 and 3, or within another reasonable time period determined by the department,

owners and operators must notify the department of their intent to permanently close or make the change in service, unless such action is in response to corrective action. The required assessment of the excavation zone under section 33-24-08-62 must be performed after notifying the department but before completion of the permanent closure or a 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 underground storage tank system to store a nonregulated substance is considered a change in service. Before 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 section 33-24-08-62.

(Note: The following cleaning and closure procedures may be used to comply with this section: American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks"; American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks"; American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks", may be used as guidance for compliance with this section; and 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: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-62. Assessing the site at closure or change in service.

1. Before permanent closure or a change in service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the underground storage tank site. In 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 subsections 5 and 6 of section 33-24-08-33 is operating in accordance with the requirements in section 33-24-08-33 at the time of closure, and indicates no release has occurred.

2. If contaminated soils, contaminated ground water, or free product as a liquid or vapor is discovered under subsection 1, or by any other manner, owners and operators must begin corrective action in accordance with sections 33-24-08-50 through 33-24-08-57.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-63. Applicability to previously closed underground storage tank systems. When directed by the department, the owner and operator of an underground storage tank system permanently closed before December 22, 1988, must assess the excavation zone and close the underground storage tank system in accordance with sections 33-24-08-60 through 33-24-08-64 if releases from the underground storage tank may, in the judgment of the department, pose a current or potential threat to human health and the environment.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-64. Closure records. Owners and operators must maintain records in accordance with section 33-24-08-24 that are capable of demonstrating compliance with closure requirements under sections 33-24-08-60 through 33-24-08-64. The results of the excavation zone assessment required in section 33-24-08-62 must be maintained for at least three 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 underground storage tank system out of service;
2. By the current owners and operators of the underground storage tank system site; or
3. By mailing these records to the department if they cannot be maintained at the closed facility.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-65. [Reserved]

33-24-08-66. [Reserved]

33-24-08-67. [Reserved]

33-24-08-68. [Reserved]

33-24-08-69. [Reserved]

33-24-08-70. [Reserved]

33-24-08-71. [Reserved]

33-24-08-72. [Reserved]

33-24-08-73. [Reserved]

33-24-08-74. [Reserved]

33-24-08-75. [Reserved]

33-24-08-76. [Reserved]

33-24-08-77. [Reserved]

33-24-08-78. [Reserved]

33-24-08-79. [Reserved]

33-24-08-80. Applicability (financial responsibility).

1. Sections 33-24-08-80 through 33-24-08-102 apply to owners and operators of all petroleum underground storage tank systems except as otherwise provided.
2. Owners and operators of petroleum underground storage tank systems are subject to these requirements if they are in operation on or after the date for compliance established in section 33-24-08-81.
3. State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the

United States are exempt from the requirements of sections 33-24-08-80 through 33-24-08-102.

4. The requirements of sections 33-24-08-80 through 33-24-08-102 do not apply to owners or operators of any underground storage tank system described in subsection 2 or 3 of section 33-24-08-01.
5. If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in section 33-24-08-81.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-81. Financial responsibility compliance dates. Owners of petroleum underground storage tanks are required to comply with the requirements of sections 33-24-08-80 through 33-24-08-102 by the following dates:

1. All petroleum marketing firms owning one thousand or more underground storage tanks and all other underground storage tank owners that report a tangible net worth of twenty million dollars or more to the United States securities and exchange commission, dun and bradstreet, the energy information administration, or the rural electrification administration - January 24, 1989.
2. All petroleum marketing firms owning one hundred to nine hundred ninety-nine underground storage tanks - October 26, 1989.
3. All petroleum marketing firms owning thirteen to ninety-nine underground storage tanks at more than one facility - April 26, 1990.
4. All petroleum underground storage tank owners not described in subsection 1, 2, or 3, including all local government entities - October 26, 1990.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-82. Definitions (financial responsibility). When used in sections 33-24-08-80 through 33-24-08-102, the following terms have the meanings given below:

1. "Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action or compensation for bodily injury or property damage, or both, neither expected nor intended by the tank owner or operator.
2. "Bodily injury" has the meaning given to this term by applicable state law; however, this term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.
3. "Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.
4. "Department" means the North Dakota state department of health and consolidated laboratories.
5. "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:
 - a. A 10-K report submitted to the securities and exchange commission;
 - b. An annual report of tangible net worth submitted to dun and bradstreet; or
 - c. Annual reports submitted to the energy information administration or the rural electrification administration. "Financial reporting year" may thus comprise a fiscal-year or a calendar-year period.
6. "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:
 - a. By the environmental protection agency or a state to require corrective action or to recover the costs of corrective action;
 - b. By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
 - c. By any person to enforce the terms of a financial assurance mechanism.
7. "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release

from an underground storage tank. (NOTE: This definition is intended to assist in the understanding of these rules and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence".)

8. "Owner or operator", when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.
9. "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.
10. "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with underground storage tanks as well as petroleum marketing facilities are considered to be petroleum marketing firms.
11. "Property damage" has the meaning given this term by applicable state law. This term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.
12. "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in sections 33-24-08-85 through 33-24-08-93, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.
13. "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.
14. "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits

obtained or controlled by a particular entity as a result of past transactions.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-83. Amount and scope of required financial responsibility.

1. Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:
 - a. For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than ten thousand gallons [37854 liters] of petroleum per month based on annual throughput for the previous calendar year, one million dollars; and
 - b. For all other owners or operators of petroleum underground storage tanks, five hundred thousand dollars.
2. Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:
 - a. For owners or operators of one to one hundred petroleum underground storage tanks, one million dollars; and
 - b. For owners or operators of one hundred one or more petroleum underground storage tanks, two million dollars.
3. For the purposes of subsections 2 and 6 only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.
4. Except as provided in subsection 5, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:
 - a. Taking corrective action;

- b. Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
 - c. Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections 1 and 2.
5. If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required must be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.
 6. Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds one hundred, the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.
 7. The amounts of assurance required under this section exclude legal defense costs.
 8. The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-84. Allowable mechanisms and combinations of mechanisms.

1. Subject to the limitations of subsections 2 and 3, an owner or operator may use any one or combination of the mechanisms listed in sections 33-24-08-85 through 33-24-08-93 to demonstrate financial responsibility under sections 33-24-08-80 through 33-24-08-102 for one or more underground storage tanks.

2. An owner or operator may use a guarantee or surety bond to establish financial responsibility only if the attorneys general of the states in which the underground storage tanks are located have submitted a written statement to the department that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in that state.
3. An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this section, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-85. Financial test of self-insurance.

1. An owner or operator, or guarantor, or both, may satisfy the requirements of section 33-24-08-83 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, or guarantor, or both, must meet the criteria of subsection 2 or 3 based on yearend financial statements for the latest completed fiscal year.
2. The following apply:
 - a. The owner or operator, or guarantor, or both, must have a tangible net worth of at least ten times:
 - (1) The total of the applicable aggregate amount required by section 33-24-08-83, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department;
 - (2) The sum of the corrective action cost estimates, the current closure and postclosure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to the department under sections 33-24-05-58, 33-24-05-77, and 33-24-05-79; and
 - (3) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to the department under chapter 33-25-01.

- b. The owner or operator, or guarantor, or both, must have a tangible net worth of at least ten million dollars.
 - c. The owner or operator, or guarantor, or both, must have a letter signed by the chief financial officer worded as specified in subsection 4.
 - d. The owner or operator, or guarantor, or both, must either:
 - (1) File financial statements annually with the United States securities and exchange commission, the energy information administration, or the rural electrification administration; or
 - (2) Report annually the firm's tangible net worth to dun and bradstreet, and dun bradstreet must have assigned the firm a financial strength rating of 4A or 5A.
 - e. The firm's yearend financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
3. The following apply:
- a. The owner or operator, or guarantor, or both, must meet the financial test requirements of subdivision a of subsection 6 of section 33-24-05-79, substituting the appropriate amounts specified in subdivisions a and b of subsection 2 of section 33-24-08-83 for the "amount of liability coverage" each time specified in that section;
 - b. The fiscal yearend financial statements of the owner or operator, or guarantor, or both, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination;
 - c. The firm's yearend financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification;
 - d. The owner or operator, or guarantor, or both, must have a letter signed by the chief financial officer, worded as specified in subsection 4; and
 - e. If the financial statements of the owner or operator, or guarantor, or both, are not submitted annually to the United States securities and exchange commission, the energy information administration or the rural electrification administration, the owner or operator, or guarantor, or both, must obtain a special report by an independent certified public accountant stating that:

- (1) The certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest yearend financial statements of the owner or operator, or guarantor, or both, with the amounts in such financial statements; and
 - (2) In connection with that comparison, no matters came to the certified public accountant's attention which caused the certified public accountant to believe that the specified data should be adjusted.
4. To demonstrate that it meets the financial test under subsection 2 or 3, the chief financial officer of the owner or operator, or guarantor, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance", and/or "guarantee"] to demonstrate financial responsibility for [insert: "Taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator", and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to state requirements.]

A [insert: "financial test", and/or "guarantee"] is also used by this [insert: "owner or operator", or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other environmental protection agency regulations or state programs authorized by the environmental protection agency under 40 CFR Parts 271 and 145:

EPA Regulations	Amount
Closure [§§264.143 and 265.143]	\$ _____
Postclosure Care [§§264.145 and 265.145]	\$ _____
Liability Coverage [§§264.147 and 265.147]	\$ _____
Corrective Action [§264.101(b)]	\$ _____
Plugging and Abandonment [§144.63]	\$ _____
Closure	\$ _____
Postclosure Care	\$ _____
Liability Coverage	\$ _____
Corrective Action	\$ _____
Plugging and Abandonment	\$ _____
 Total	 \$ _____

This [insert: "owner or operator", or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of subsection 2 of section 33-24-08-85 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of subsection 3 of section 33-24-08-85 are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

- | | | |
|---|-------|-------|
| 1. Amount of annual underground storage tank aggregate coverage being assured by a financial test, and/or guarantee | \$ | |
| 2. Amount of corrective action, closure and postclosure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee | \$ | |
| 3. Sum of lines 1 and 2 | \$ | |
| 4. Total tangible assets | \$ | |
| 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] | \$ | |
| 6. Tangible net worth [subtract line 5 from line 4] | \$ | |
| | Yes | No |
| 7. Is line 6 at least \$10 million? | _____ | _____ |
| 8. Is line 6 at least 10 times line 3? | _____ | _____ |
| 9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? | _____ | _____ |
| 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? | _____ | _____ |
| 11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? | _____ | _____ |
| 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] | _____ | _____ |

ALTERNATIVE II

- | | | |
|--|-------|----------|
| 1. Amount of annual underground storage tank aggregate coverage being assured by a test, and/or guarantee | | \$ _____ |
| 2. Amount of corrective action, closure and postclosure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee | | \$ _____ |
| 3. Sum of lines 1 and 2 | | \$ _____ |
| 4. Total tangible assets | | \$ _____ |
| 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] | | \$ _____ |
| 6. Tangible net worth [subtract line 5 from line 4] | | \$ _____ |
| 7. Total assets in the United States [required only if less than 90 percent of assets are located in the United States] | | \$ _____ |
| | Yes | No |
| 8. Is line 6 at least \$10 million? | _____ | _____ |
| 9. Is line 6 at least 6 times line 3? | _____ | _____ |
| 10. Are at least 90 percent of assets located in the United States? [If "No", complete line 11.] | _____ | _____ |
| 11. Is line 7 at least 6 times line 3? [Fill in either lines 12-15 or lines 16-18:] | _____ | _____ |
| 12. Current assets | | \$ _____ |
| 13. Current liabilities | | \$ _____ |
| 14. Net working capital [subtract line 13 from line 12] | | \$ _____ |
| | Yes | No |
| 15. Is line 14 at least 6 times line 3? | _____ | _____ |
| 16. Current bond rating of most recent bond issue | _____ | |
| 17. Name of rating service | _____ | |

18. Date of maturity of bond _____

19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? _____

[If "No", please attach a report from an independent certified public accountant certifying that there are no material differences between data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in subsection 4 of section 33-24-08-85, chapter 33-24-08, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

5. If an owner or operator using the test to provide financial assurance finds that the owner or operator no longer meets the requirements of the financial test based on the yearend financial statements, the owner or operator must obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.
6. The department may require reports of financial condition at any time from the owner or operator, or guarantor, or both. If the department finds, on the basis of such reports or other information, that the owner or operator, or guarantor, or both, no longer meets the financial test requirements of subsections 2 or 3 and 4 of section 33-24-08-85, the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.
7. If the owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that the owner or operator no longer meets the requirements of the financial test based on the yearend financial statements, or within thirty days of notification by the department that the owner or operator no longer meets the requirements of the financial test, the owner or operator must notify the department of such failure within ten days.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-86. Guarantee.

1. An owner or operator may satisfy the requirements of section 33-24-08-83 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:
 - a. A firm that:
 - (1) Possesses a controlling interest in the owner or operator;
 - (2) Possesses a controlling interest in a firm described under paragraph 1 of subdivision a of subsection 1; or
 - (3) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or
 - b. A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.
2. Within one hundred twenty days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of section 33-24-08-85 based on yearend financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in subsection 4 of section 33-24-08-85 and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty days of the end of that financial reporting year the guarantor shall send via certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the department notifies the guarantor that the guarantor no longer meets the requirements of the financial test of subsections 2 or 3 and 4 of section 33-24-08-85, the guarantor must notify the owner or operator within ten days of receiving such notification from the department. In both cases, the guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in subsection 3 of section 33-24-08-100.
3. The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

- (1) Guarantor meets or exceeds the financial test criteria of subsections 2 or 3 and 4 of section 33-24-08-85 and agrees to comply with the requirements for guarantors as specified in subsection 2 of section 33-24-08 86.
- (2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 33-24-08-12, and the name and address of the facility. This guarantee satisfies sections 33-24-08-80 through 33-24-08-102 requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.
- (3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)][owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the [department] has determined or suspects a release has occurred at an underground storage tank covered by this

guarantee, the guarantor, upon instructions from the [department] shall fund a standby trust fund in accordance with the provisions of section 33-24-08-98, in an amount not to exceed the coverage limits specified above.

In the event that the [department] determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with sections 33-24-08-50 through 33-24-08-57, the guarantor upon written instructions from the [department] shall fund a standby trust in accordance with the provisions of section 33-24-08-98, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from, or alleged to arise from, such injury or damage, the guarantor, upon written instructions from the [department], shall fund a standby trust in accordance with the provisions of section 33-24-08-98 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

- (4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of subsections 2 or 3 and 4 of section 33-24-08-85, guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate one hundred twenty days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.
- (5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code naming guarantor as debtor, within ten days after commencement of the proceeding.
- (6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 33-24-08.
- (7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of sections 33-24-08-80 through 33-24-08-102 for the

above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

- (8) The guarantor's obligation does not apply to any of the following:
- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
 - (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
 - (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
 - (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
 - (e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 33-24-08-83.
- (9) Guarantor expressly waives notice of acceptance of this guarantee by [the department], by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in subsection 3 of section 33-24-08-86 as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

4. An owner or operator who uses a guarantee to satisfy the requirements of section 33-24-08-83 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the department under section 33-24-08-98. The standby trust fund must meet the requirements specified in section 33-24-08-93.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-87. Insurance and risk retention group coverage.

1. An owner or operator may satisfy the requirements of section 33-24-08-83 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.
2. Each insurance policy must be amended by an endorsement worded as specified in subdivision a, or evidenced by a certificate of insurance worded as specified in subdivision b, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

- a. Endorsement

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]

Address of [Insurer or Risk Retention Group]:

Name of Insured: _____

Address of Insured: _____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 33-24-08-12, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections a through e of this paragraph 2 are hereby amended to conform with subsections a through e;

- a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.
- b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 33-24-08-85 through 33-24-08-92.
- c. Whenever requested by the [department], the ["Insurer" or "Group"] agrees to furnish to the [department] a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in subdivision a of subsection 2 of section 33-24-08-87 and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]
 [Name of person signing]
 [Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]
 [Address of Representative]

b. Certificate of insurance

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: _____

Endorsement (if applicable) _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]

Address of [Insurer or Risk Retention Group]:

Name of Insured: _____

Address of Insured: _____

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 33-24-08-12, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage

for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 33-24-08-85 through 33-24-08-92.

c. Whenever requested by the [department], the ["Insurer" or "Group"] agrees to furnish to the [department] a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or other termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in subdivision b of subsection 2 of section 33-24-08-87 and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

3. Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-88. Surety bond.

1. An owner or operator may satisfy the requirements of section 33-24-08-83 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest circular 570 of the United States department of the treasury.
2. The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

Performance Bond

Date bond executed: _____
Period of coverage: _____
Principal: [legal name and business address of owner
or operator] _____

Type of organization: [insert "individual", "joint
venture", "partnership", or "corporation"]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility
and the name(s) and address(es) of the facility(ies) where the
tanks are located. If more than one instrument is used to
assure different tanks at any one facility, for each tank
covered by this instrument, list the tank identification
number provided in the notification submitted pursuant to
section 33-24-08-12, and the name and address of the facility.
List the coverage guaranteed by the bond: "taking corrective
action" provided in the notification submitted pursuant to
and/or "compensating third parties for bodily injury and
property damage caused by" either "sudden accidental releases"
or "nonsudden accidental releases" or "accidental releases"
"arising from operating the underground storage tank"].
Penal sums of bond:
Per occurrence \$ _____
Annual aggregate \$ _____
Surety's bond number: _____

Know all Persons by These Presents, that we, the Principal and
Surety(ies), hereto are firmly bound to [the department], in
the above penal sums for the payment of which we bind
ourselves, our heirs, executors, administrators, successors,
and assigns jointly and severally; provided that, where the
Surety(ies) are corporations acting as co-sureties, we, the
Sureties, bind ourselves in such sums jointly and severally
only for the purpose of allowing a joint action or actions
against any or all of us, and for all other purposes each
Surety binds itself, jointly and severally with the Principal,
for the payment of such sums only as is set forth opposite the
name of such Surety, but if no limit of liability is
indicated, the limit of liability shall be the full amount of
the penal sums.

Whereas said Principal is required under section 23-20.3-04.1
of the North Dakota Century Code to provide financial
assurance for [insert: "taking corrective action" and/or
"compensating third parties for bodily injury and property
damage caused by" either "sudden accident releases" or

"nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with sections 33-24-08-50 through 33-24-08-57 and the department's instructions for", and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in sections 33-24-08-80 through 33-24-08-102, within one hundred twenty days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 33-24-08-83.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the [department] that the Principal has failed to ["take corrective action, in accordance with chapter 33-24-08, sections 33-24-08-50 through 33-24-08-57 and the department's instructions", and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with chapter 33-24-08 and the department's instructions", and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the [department] under section 33-24-08-98.

Upon notification by the [department] that the Principal has failed to provide alternate financial assurance within sixty days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the [department] has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the [department] under section 33-24-08-98.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its(their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in subsection 2 of section 33-24-08-88 as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address]
[State of Incorporation: _____]
[Liability limit: \$ _____]
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

3. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.
4. The owner or operator who uses a surety bond to satisfy the requirements of section 33-24-08-83 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the department under section 33-24-08-98. This standby trust fund must meet the requirements specified in section 33-24-08-93.

History: Effective December 1, 1989.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-89. Letter of credit.

1. An owner or operator may satisfy the requirements of section 33-24-08-83 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

2. The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

[Name and address of issuing institution]

[Name and address of director(s) of state implementing agency(ies)]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation [insert, if more than one director of a state implementing agency is a beneficiary, "by any one of you"] of

(1) Your sight draft, bearing reference to this letter of credit, No. _____, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of chapter 23-20.3-04.1 of the North Dakota Century Code".

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 33-24-08-12, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 33-24-08-83.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in subsection 2 of section 33-24-08-89 as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce", or "the Uniform Commercial Code"].

3. An owner or operator who uses a letter of credit to satisfy the requirements of section 33-24-08-83 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the department will be deposited by the

issuing institution directly into the standby trust fund in accordance with instructions from the department under section 33-24-08-98. This standby trust fund must meet the requirements specified in section 33-24-08-93.

4. The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-90. [Reserved]

33-24-08-91. State fund or other state assurance. [Reserved]

33-24-08-92. Trust fund.

1. An owner or operator may satisfy the requirements of section 33-24-08-83 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.
2. The wording of the trust agreement must be identical to the wording specified in subdivision a of subsection 2 of section 33-24-08-93, and must be accompanied by a formal certification of acknowledgement as specified in subdivision b of subsection 2 of section 33-24-08-93.
3. The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining required coverage.
4. If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the department for release of the excess.
5. If other financial assurance as specified in sections 33-24-08-80 through 33-24-08-102 is substituted for all or

part of the trust fund, the owner or operator may submit a written request to the department for release of the excess.

6. Within sixty days after receiving a request from the owner or operator for release of funds as specified in subsection 4 or 5, the department will instruct the trustee to release to the owner or operator such funds as the department specifies in writing.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-93. Standby trust fund.

1. An owner or operator using any one of the mechanisms authorized by section 33-24-08-86, 33-24-08-88, or 33-24-08-89 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.
2. The following apply:
 - a. The standby trust agreement must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor", and [name of corporate trustee], [insert "Incorporated in the state of _____" or "a national bank"], the "Trustee".

[Whereas, the department has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank (This paragraph is only applicable to the standby trust agreement.)];

[Whereas, the Grantor has elected to establish [insert either "a guarantee", "surety bond", or "letter of credit"] to provide all or part of such financial assurance for the

underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

[Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of [the department]. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided [The Fund is established initially as a standby to receive payments and shall not consist of any property.]. Payments made by the provider of financial assurance pursuant to the [department's] instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the [department].

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"].

The Trustee shall make payments from the Fund as [the department] shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third-parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 33-24-08-83.

The Trustee shall reimburse the Grantor, or other persons as specified by the [department], from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the [department] shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the [department] specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in

accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge the duties of the Trustee with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action

to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the [department] to the Trustee shall be in writing, signed by the [department], and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the [department] hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the [department], except as provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and [the department] if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the [department], if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the [department] issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This agreement shall be administered, construed, and enforced according to the laws of the state of [insert name of state], or the Comptroller of the Currency in the case of National Association of banks.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement..

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in subdivision a of subsection 2 of

section 33-24-08-93 as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of the Witness]

[Title]

[Seal]

- b. The standby trust agreement must be accompanied by a formal certification of acknowledgment similar to the following.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that the owner or operator resides at [address], that the owner or operator is [title] of [corporation], the corporation described in and which executed the above instrument; that the owner or operator knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that the owner or operator signed their name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

3. The department will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the department determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.
4. An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this section.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-94. Substitution of financial assurance mechanisms by owner or operator.

1. An owner or operator may substitute any alternate financial assurance mechanisms as specified in sections 33-24-08-80 through 33-24-08-102, provided that at all times the owner or operator maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of section 33-24-08-83.
2. After obtaining alternate financial assurance as specified in sections 33-24-08-80 through 33-24-08-102, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-95. Cancellation or nonrenewal by provider of financial assurance.

1. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.
 - a. Termination of a guarantee, a surety bond, or a letter of credit may not occur until one hundred twenty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
 - b. Termination of insurance, risk retention group coverage, or state-funded assurance may not occur until sixty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
2. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in section 33-24-08-96, the owner or operator must obtain alternate coverage as specified in this section within sixty days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty days after receipt of the notice of termination, the owner or operator must notify the department of such failure and submit:
 - a. The name and address of the provider of financial assurance;
 - b. The effective date of termination; and

- c. The evidence of the financial assistance mechanism subject to the termination maintained in accordance with subsection 2 of section 33-24-08-97.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-96. Reporting by owner or operator.

1. An owner or operator must submit the appropriate forms listed in subsection 2 of section 33-24-08-97 documenting current evidence of financial responsibility to the department:
 - a. Within thirty days after the owner or operator identifies a release from an underground storage tank required to be reported under section 33-24-08-43 or 33-24-08-51;
 - b. If the owner or operator fails to obtain alternate coverage as required by sections 33-24-08-80 through 33-24-08-102, within thirty days after the owner or operator receives notice of:
 - (1) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming a provider of financial assurance as a debtor;
 - (2) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
 - (3) Failure of a guarantor to meet the requirements of the financial test;
 - (4) Other incapacity of a provider of financial assurance; or
 - c. As required by subsection 7 of section 33-24-08-85 and subsection 2 of section 33-24-08-95.
2. An owner or operator must certify compliance with the financial responsibility requirements of chapter 33-24-08 as specified in the new tank notification form when notifying the department of the installation of a new underground storage tank under section 33-24-08-12.
3. The department may require an owner or operator to submit evidence of financial assurance as described in subsection 2 of section 33-24-08-97 or other information relevant to compliance with sections 33-24-08-80 through 33-24-08-102 at any time.

History: Effective December 1, 1989.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-97. Recordkeeping.

1. Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under sections 33-24-08-80 through 33-24-08-102 for an underground storage tank until released from the requirements of sections 33-24-08-80 through 33-24-08-102 under section 33-24-08-99. An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained offsite must be made available upon request of the department.
2. An owner or operator must maintain the following types of evidence of financial responsibility;
 - a. An owner or operator using an assurance mechanism specified in sections 33-24-08-85 through 33-24-08-90 or section 33-24-08-92 must maintain a copy of the instrument worded as specified;
 - b. An owner or operator using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on yearend financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than one hundred twenty days after the close of the financial reporting year;
 - c. An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement;
 - d. An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance coverage policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements;
 - e. An owner or operator covered by a state fund or other state assurance must maintain on file a copy of any evidence of coverage supplied by or required by the state under section 33-24-08-91; and
 - f. An owner or operator using an assurance mechanism specified in sections 33-24-08-85 through 33-24-08-92 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions

in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of sections 33-24-08-80 through 33-24-08-102.

The financial assurance mechanism(s) used to demonstrate financial responsibility under sections 33-24-08-80 through 33-24-08-102 is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third-parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases".]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-98. Drawing on financial assurance mechanisms.

1. The department shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the department, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

a. The following apply:

- (1) The owner or operator fails to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanisms; and

- (2) The department determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the department pursuant to sections 33-24-08-40 through 33-24-08-43 or 33-24-08-50 through 33-24-08-57 of a release from an underground storage tank covered by the mechanism; or
 - b. The conditions of subdivision a of subsection 2 or paragraphs 1 or 2 of subdivision b of subsection 2 are satisfied.
2. The department may draw on a standby trust fund when:
- a. The department makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under sections 33-24-08-50 through 33-24-08-57; or
 - b. The department has received either:
 - (1) Certification from the owner or operator and the third-party liability claimants and from attorneys representing the owner or operator and the third-party liability claimants that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[_____].

[Signatures]

Owner or Operator
 Attorney for Owner or Operator
 [Notary] Date

[Signature(s)]

Claimant(s)
 Attorney(s) for Claimant(s)
 [Notary] Date or

- (2) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under sections 33-24-08-80 through 33-24-08-102 and the department determines that the owner or operator has not satisfied the judgment.
3. If the department determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection 2 may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The department shall pay third-party liability claims in the order in which the department receives certifications under paragraph 1 of subdivision b of subsection 2 and valid court orders under paragraph 2 of subdivision b of subsection 2.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-99. Release from requirements. An owner or operator is no longer required to maintain financial responsibility under sections 33-24-08-80 through 33-24-08-102 for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by sections 33-24-08-60 through 33-24-08-64.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-100. Bankruptcy or other incapacity of owner or operator or provider of financial assurance.

1. Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code naming an owner or operator as debtor, the owner or operator must notify the department by certified mail of such commencement and submit the appropriate forms listed in subsection 2 of section 33-24-08-97 documenting current financial responsibility.
2. Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by

certified mail of such commencement as required under the terms of the guarantee specified in section 33-24-08-86.

3. An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in sections 33-24-08-80 through 33-24-08-102 within thirty days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within thirty days after such notification, the owner or operator must notify the department.
4. Within thirty days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-101. Replenishment of guarantees, letters of credit, or surety bonds.


1. If at any time after a standby trust is funded upon the instruction of the department with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:
 - a. Replenish the value of financial assurance to equal the full amount of coverage required; or
 - b. Acquire another financial assurance mechanism for the amount which funds in the standby trust have been reduced.
2. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by section 33-24-08-83. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

History: Effective December 1, 1989.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-102. Suspension of enforcement. [Reserved]

Appendix I

	NOTIFICATION FOR UNDERGROUND STORAGE TANKS NORTH DAKOTA STATE DEPARTMENT OF HEALTH AND CONSOLIDATED LABORATORIES SFN 10980 2/89	Type of Owner (Check one) <input type="checkbox"/> State or Local Government <input type="checkbox"/> Private <input type="checkbox"/> Federal Government <input type="checkbox"/> Ownership uncertain (Give Facility I.D. Number) _____
Tank Owner Name		
Street Address	City	State Zip Code Phone Number
Contact Person	Title	
Street Address	City	State Zip Code Phone Number
Facility Name Where Tanks Located		County
Street Address/Section, Township, Range	Nearest City	State Zip Code Number of Tanks
Type of Notification <input type="checkbox"/> First <input type="checkbox"/> Amended		Are Tanks Located on Indian Land? <input type="checkbox"/> Yes <input type="checkbox"/> No

Note: If there are more than five underground storage tanks at this location, make additional copies of this form before filling in any data.

DESCRIPTION OF UNDERGROUND STORAGE TANK

	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____
1. STATUS OF TANK (Check One) Currently in use Temporarily out of use Permanently out of use Brought into use after 5/8/86					
2. ESTIMATED AGE (YEARS)					
3. ESTIMATED TOTAL CAPACITY (GALLONS)					
4. MATERIAL OF CONSTRUCTION (Check One) Steel Concrete Fiberglass Reinforced Plastic Other (specify) Unknown					
5. INTERNAL PROTECTION (Check all that apply) Cathodic Protection Interior Lining (e.g., epoxy resins) Other (specify) None Unknown					

	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____
6. EXTERNAL PROTECTION (Check all that apply) Cathodic Protection Painted (e.g., asphaltic) Fiberglass Reinforced Plastic Coated Other (specify) None Unknown					
7. PIPING (Check all that apply) Bare Steel Galvanized Steel Fiberglass Reinforced Plastic Cathodically Protected Other (specify) Unknown					
8. SUBSTANCE CURRENTLY OR LAST STORED IN GREATEST QUANTITY BY VOLUME a. Empty b. Petroleum Gasoline (including alcohol blends) Diesel Kerosene Used Oil Other (specify) c. Hazardous Substance Name of Substance or Chemical Abstract Service (CAS) No. Check box if tank stores a mixture of substances d. Unknown					
9. ADDITIONAL INFORMATION (FOR TANKS PERMANENTLY TAKEN OUT OF SERVICE) a. Estimated date last used (mo/yr) b. Estimated quantity of substance remaining (gal.) c. Check box if tank was filled with inert material (e.g., sand, concrete) d. Check box if tank was removed					

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible to obtaining the information, I believe that the submitted information is true, accurate, and complete.

Signature

Date

CERTIFICATION OF COMPLIANCE (COMPLETE FOR ALL NEW TANKS AT THIS LOCATION)

Tank Owner Name _____ Facility Address _____

	Tank(s)	Piping
<p>10. RELEASE DETECTION (Specify Tanks(s) by No., for piping check all that apply)</p> <p align="center"> Manual tank gauging. Tank tightness testing with inventory controls. Automatic tank gauging. Vapor monitoring. Ground water monitoring. Interstitial monitoring within a secondary barrier. Interstitial monitoring within secondary containment. Automatic line leak detectors. Line tightness testing. Another method allowed by the implementing agency. Please specify: _____ </p>		
<p>11. CORROSION PROTECTION (Specify Tank(s) by No., for piping check all that apply)</p> <p align="center"> As specified for coated steel tanks with cathodic protection. As specified for coated steel piping with cathodic protection. Another method allowed by the implementing agency. Please specify: _____ </p>		
<p>12. I have financial responsibility in accordance with Subpart 1. Please specify:</p> <p>Method: _____</p> <p>Insurer: _____</p> <p>Policy Number: _____</p>		

	Tank(s)	Piping
<p>13. INSTALLATION (Check all that apply)</p> <p align="center"> The installer has been certified by the tank and piping manufacturers. The installer has been certified or licensed by the implementing agency. The installation has been inspected and certified by a registered professional engineer. The installation has been inspected and approved by the implementing agency. All work listed on the manufacturer's installation checklists has been completed. Another method was used as allowed by the implementing agency. Please specify: _____ </p>		
<p>14. OATH: I certify that the information concerning installation provided in item 13 is true to the best of my belief and knowledge.</p> <p>Installer: _____</p> <p align="center">Name Date</p> <p align="center">_____</p> <p align="center">Position</p> <p align="center">_____</p> <p align="center">Company</p>		

GENERAL INFORMATION

Notification is required by Federal law for all underground tanks that have been used to store regulated substances since January 1, 1974, and that are in the ground as of May 8, 1986.

The primary purpose of this notification program is to locate and evaluate underground tanks that store or have stored petroleum and hazardous substances. It is expected that the information you provide will be based on reasonably available records, or, in the absence of such records, your knowledge, belief, or recollection.

Who Must Notify? Section 9002 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that, unless exempted, owners of underground tanks that store regulated substances must notify designated State or local agencies of the existence of their tanks. Owner means - (a) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances, and (b) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

What Tanks Are Included? Underground storage tank is defined as any one or combination of tanks that (1) is used to contain an accumulation of "regulated substances" and (2) whose volume (including connected underground piping) is 10% or more beneath the ground. Some examples are: 1. underground tanks storing gasoline, used oil, or diesel fuel; 2. underground tanks storing industrial solvents, pesticides, herbicides or fumigants; 3. underground tanks no longer in operation but which stored regulated substances (petroleum or hazardous substances) since January 1, 1974.

What Tanks Are Excluded? Tanks excluded from notification are: 1. farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; 2. tanks used for storing heating oil for consumptive use on the premises where stored; 3. septic tanks; 4. pipeline facilities (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968, or the Hazardous Liquid Pipeline Safety Act of 1979, or which is an intrastate pipeline facility regulated under State laws; 5. surface impoundments, pits, ponds, or lagoons; 6. storm water or waste water collection systems; 7. flow-through process tanks; 8. liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; 9. storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

What Substances Are Covered? The notification requirements apply to underground storage tanks that contain regulated substances. This includes any substance defined as hazardous in section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), with the exception of those substances regulated as hazardous waste under Subtitle C of RCRA. It also includes petroleum, e.g., crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

When Must One Notify? 1. Owners of underground storage tanks in use or that have been taken out of operation after January 1, 1974, but still in the ground, must notify by May 8, 1986. 2. Owners who bring underground storage tanks into use after May 8, 1986, must notify within 30 days of bringing the tanks into use.

What Are The Penalties? Any owner who knowingly fails to notify or knowingly submits false information shall be subject to a civil penalty not to exceed \$10,000 for each tank for which notification is not given or for which false information is submitted.

Where Must One Notify? North Dakota State Department of Health and Consolidated Laboratories, Division of Waste Management, 1200 Missouri Avenue, Room 302, Box 5520, Bismarck, ND 58502-5520.

Appendix II
Statement for Shipping Tickets and Invoices

Note: A federal law (the Resource Conservation and Recovery Act (RCRA), as amended (Pub. L. 98-616)) requires owners of certain underground storage tanks to notify designated state or local agencies by May 8, 1986, of the existence of their tanks. Notifications for tanks brought into use after May 8, 1986, must be made within thirty days. Consult the environmental protection agency's regulations, issued on November 8, 1985, (40 CFR part 280) to determine if you are affected by this law.

TITLE 40
Historical Board

SEPTEMBER 1989

STAFF COMMENT: Chapter 40-01-03 contains all new material but is not underscored so as to improve readability.

CHAPTER 40-01-03
DEACCESSION AND DISPOSAL OF COLLECTIONS

Section	
40-01-03-01	Definitions
40-01-03-02	General Method of Deaccession and Disposal - Exception
40-01-03-03	Records of Deaccession
40-01-03-04	Deaccession of Human Skeletal Remains and Associated Grave Goods
40-01-03-05	Donor Consent
40-01-03-06	Release of Human Skeletal Remains and Associated Grave Goods
40-01-03-07	Security and Coordination

40-01-03-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Analysis" means any activity that requires Indian human skeletal remains and associated grave goods to be touched by any person other than appropriate Indian spiritual leaders appointed by their respective tribal government. The term "analysis" includes identification.
2. "Associated grave goods" means all objects, which shall generally include all items believed to have been interred with human skeletal remains, including, but not limited to, projectile points, knives, scrapers, articles of clothing, ornaments, beads, and religious items such as pipes, stones, dishes and pottery, feathers, and any item within the physical

anthropology collection so identified by the intertribal reinterment committee.

3. "Deaccession" means the process of permanently removing articles from the collections of the state historical society of North Dakota; it involves state historical board action, records management procedures, and disposal of the articles.
4. "Duly designated representative" means any person who is so appointed by the person's respective tribal government and can provide written documentation of such appointment.
5. "Federal custodian" means the federal agency which manages lands owned by the United States government and from which human skeletal remains and associated grave goods have been recovered.
6. "Intertribal reinterment committee" means that committee comprised of representatives appointed by each tribal government to represent their respective tribe in matters related to the deaccession and reinterment of human skeletal remains and associated grave goods.
7. "Superintendent" means the superintendent of the state historical board as set forth in North Dakota Century Code section 55-02-01.
8. "Tribeally identified articles" means human skeletal remains and associated grave goods for which tribal affiliation has been determined.

History: Effective September 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 55-01-02(3)

40-01-03-02. General method of deaccession and disposal - Exception. With the exception of those articles constituted by human skeletal remains and associated grave goods, the state historical board may deaccession articles from its collections upon the assessment of the superintendent. The superintendent, in making such an assessment to deaccession articles, shall also discuss the method of disposal. Methods of disposal must be as follows:

1. In the case of donated articles, unless other conditions are specified in a deed, gift, or other conveyance, deaccessioned articles will first be offered back to the donor if the donor is alive.
2. Articles may be transferred to another educational institution through gift, or exchange for other articles, or purchase by that institution.

3. Articles inappropriate to the collecting policy of the state historical board and other articles of no value to the state historical society or other institutions may be physically destroyed.
4. Articles of monetary value may be sold or traded for articles of similar value.

History: Effective September 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 55-01-02(3)

40-01-03-03. Records of deaccession. A permanent record will be kept of all articles deaccessioned in accordance with section 40-01-03-02.

History: Effective September 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 55-01-02(3)

40-01-03-04. Deaccession of human skeletal remains and associated grave goods. Human skeletal remains and associated grave goods are recognized as a distinct collection category exempt from the general method of deaccession and disposal prescribed in sections 40-01-03-02 and 40-01-03-03. Human skeletal remains and associated grave goods included in the categories enumerated in section 40-01-03-06 must be deaccessioned and permanently removed from the state historical society's collections, and disposed of in accordance with sections 40-01-03-06 and 40-01-03-07, at the direction of the state historical board.

An exit inventory must be conducted to verify and record the items to be deaccessioned.

The inventory must be conducted by a representative of the state historical board, the state historical society superintendent or superintendent's designees, and the intertribal reinterment committee or its designees.

The exit inventory must list by description the items being deaccessioned. With the consent of the intertribal reinterment committee, it may include photography, replication, measuring, and weighing of any associated grave good.

The inventory must be conducted in such a manner to honor and respect the religious beliefs and ceremonies of the tribes, in accordance with the requirements set forth by the spiritual leader designated by the intertribal reinterment committee.

History: Effective September 1, 1989.
General Authority: NDCC 28-32-02

Law Implemented: NDCC 55-01-02(3)

40-01-03-05. Donor consent. The state historical society shall endeavor to secure the written consent of all living donors and federal custodians of human skeletal remains and associated grave goods in its collections to release all such articles for reinterment. In those instances wherein such written consent is secured, and, in the case of donated articles, if no response is received from a donor within a period of thirty days from the date of mailing of the consent request, those human skeletal remains and associated grave goods involved in such consent requests must be released for reinterment, with timely notice of such authorized release having been given to the appropriate tribal entity, as specified in section 40-01-03-06. In those instances wherein a donor or a federal custodian initially denies consent to the release of any or all of the human skeletal remains and associated grave goods involved in the respective consent request, the state historical society shall immediately, upon receiving such denial of consent in each instance, notify the intertribal reinterment committee of the denial and, upon request, provide said committee with information relative to the reason for the denial, which information must also include the name and address of the donor or federal custodian denying consent. In each such instance of an initial denial of consent, the state historical society shall continue to maintain in its collections the human skeletal remains and associated grave goods at issue, until such time as written consent to release for reinterment is secured. This does not otherwise abridge any other custodial or contractual obligations of the society.

History: Effective September 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 55-01-02(3)

40-01-03-06. Release of human skeletal remains and associated grave goods. Human skeletal remains and associated grave goods included in the following categories must be deaccessioned and released to the appropriate tribal entity for reinterment on Indian lands:

1. Those recovered from lands and other properties of the state of North Dakota and of its political subdivisions.
2. Those received from donors who are deceased.
3. Those for which donor or federal custodian consent has been secured to release for reinterment.
4. Those for which donors do not respond to consent request letters within the prescribed thirty-day period.

Tribally identified articles must be released to a duly designated representative of the respective tribal government. Those articles not tribally identified must be released to an official representative of the intertribal reinterment committee.

History: Effective September 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 55-01-02(3)

40-01-03-07. Security and coordination. Until such time as the human skeletal remains and associated grave goods in the state historical society's collections are released for reinterment, all such articles must be secured and continuously restricted from access by any person, except as provided in section 40-01-03-04. No analysis may be conducted on articles at any time prior to release, including the period involving the preparation for the articles' release except as provided in section 40-01-03-04. After the release and reinterment of such articles, the state historical society may not conduct, participate in, or finance any subsequent disinterment of any of these articles. The North Dakota Indian affairs commission must be informed of all actions of the society in carrying out activities related to the deaccession and release of human skeletal remains and associated grave goods.

History: Effective September 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 55-01-02(3)

TITLE 45
Insurance, Commissioner of

OCTOBER 1989

45-04-07-01. Definitions. As used in this chapter:

1. "1980 CET Table" means that mortality table consisting of separate rates of mortality for male and female lives, developed by the society of actuaries committee to recommend new mortality tables for valuation of standard individual ordinary life insurance, incorporated in the 1980 national association of insurance commissioners' amendments to the model standard valuation law and standard nonforfeiture law for life insurance, and referred to in those models as the commissioners' 1980 extended term insurance table.
2. "1980 CET Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 1980 CET Table.
3. "1980 CET Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 1980 CET Table.
4. "1980 CSO Table, with or without ten-year select mortality factors" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the society of actuaries committee to recommend new mortality tables for valuation of standard individual ordinary life insurance, incorporated in the 1980 national association of insurance commissioners' amendments to the model standard valuation law and standard nonforfeiture law for life insurance, and referred to in those models as the commissioners' 1980 standard ordinary mortality table, with or without ten-year select mortality factors.
5. "1980 CSO Table (F), with or without ten-year select mortality factors" means that mortality table consisting of the rates of

- mortality for female lives from the 1980 CSO Table, with or without ten-year select mortality factors.
6. "1980 CSO Table (M), with or without ten-year select mortality factors" means that mortality table consisting of the rates of mortality for male lives from the 1980 CSO Table, with or without ten-year select mortality factors.
 7. "1980 CSO and CET Smoker and Nonsmoker Mortality Tables" means the mortality tables with separate rates of mortality for smokers and nonsmokers derived from the 1980 CSO and 1980 CET Mortality Tables by the society of actuaries task force on smoker/nonsmoker mortality and adopted by the national association of insurance commissioners in December 1983. (Subsection 7 added by the national association of insurance commissioners, December 1986).

History: Effective February 1, 1985; amended effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-33

45-04-07-02. Tables.

1. For any policy of insurance on the life of either a male or female insured delivered or issued for delivery in this state and after the operative date of subsection 11 of North Dakota Century Code section 26.1-33-25 for that policy form:
 - a. A mortality table which is a blend of the 1980 CSO Table (M) and the 1980 CSO Table (F) with or without ten-year select mortality factors may, at the option of the company, be substituted for the 1980 CSO Table, with or without ten-year select mortality factors; and
 - b. A mortality table which is of the same blend as used in (i) but applied to form a blend of the 1980 CET Table (M) and the 1980 CET Table (F) may, at the option of the company, be substituted for the 1980 CET Table,for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits.
2. The following tables will be considered as the basis for acceptable tables:
 - a. 100% Male 0% Female for tables to be designated as the "1980 CSO-A" and "1980 CET-A" Tables.
 - b. 80% Male 20% Female for tables to be designated as the "1980 CSO-B" and "1980 CET-B" Tables.

- c. 60% Male 40% Female for tables to be designated as the "1980 CSO-C" and "1980 CET-C" Tables.
- d. 50% Male 50% Female for tables to be designated as the "1980 CSO-D" and "1980 CET-D" Tables.
- e. 40% Male 60% Female for tables to be designated as the "1980 CSO-E" and "1980 CET-E" Tables.
- f. 20% Male and 80% Female for tables to be designated as the "1980 CSO-F" and "1980 CET-F" Tables.
- g. 0% Male 100% Female for tables to be designated as the "1980 CSO-G" and "1980 CET-G" Tables.

Tables A and G are not to be used with respect to policies issued on or after January 1, 1985, except where the proportion of persons insured is anticipated to be ninety percent, or more of one sex or the other except for certain policies converted from group insurance. Such group conversions issued on or after January 1, 1986, must use mortality tables based on the blend of lives by sex expected for such policies if such group conversions are considered as extensions of the Norris decision. This consideration has not been clearly defined by court or legislative action in all jurisdictions. The values of 10000qx for blended tables B, C, D, E, and F are shown in Appendix I. The letter in Appendix II states the method by which selection factors may be obtained. Table A is the same as 1980 CSO Table (M) and 1980 CET Table (M) and Table G is the same as 1980 CSO Table (F) and 1980 CET Table (F).

3. Alternate rule. In determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits for any policy of insurance on the life of either a male or female insured on a form of insurance with separate rates for smokers and nonsmokers delivered or issued for delivery in this state after the operative date of subsection 11 of North Dakota Century Code section 26.1-33-24 for that policy form, in addition to the mortality tables that may be used according to this section:
- a. A mortality table which is a blend of the male and female rates of mortality according to the 1980 CSO Smoker Mortality Table, in the case of lives classified as smokers, or the 1980 CSO Nonsmoker Mortality Table, in the case of lives classified as nonsmokers, with or without ten-year select mortality factors, may, at the option of the company, be substituted for the 1980 CSO Table, with or without ten-year select mortality factors; and
 - b. A mortality table which is of the same blend as used in subdivision a of this subsection but applied to form a

blend of the male and female rates of mortality according to the corresponding 1980 CET Smoker Mortality Table or 1980 CET Nonsmoker Mortality Table may, at the option of the company, be substituted for the 1980 CET Table.

The following blended mortality tables will be considered acceptable:

SA: 100% Male 0% Female smoker tables designated as "1980 CSO-SA" and "1980 CET-SA" Tables.

SB: 80% Male 20% Female smoker tables designated as "1980 CSO-SB" and "1980 CET-SB" Tables.

SC: 60% Male 40% Female smoker tables designated as "1980 CSO-SC" and "1980 CET-SC" Tables.

SD: 50% Male 50% Female smoker tables designated as "1980 CSO-SD" and "1980 CET-SD" Tables.

SE: 40% Male 60% Female smoker tables designated as "1980 CSO-SE" and "1980 CET-SE" Tables.

SF: 20% Male 80% Female smoker tables designated as "1980 CSO-SF" and "1980 CET-SF" Tables.

SG: 0% Male 100% Female smoker tables designated as "1980 CSO-SG" and "1980 CET-SG" Tables.

NA: 100% Male 0% Female nonsmoker tables designated as "1980 CSO-NA" and "1980 CET-NA" Tables.

NB: 80% Male 20% Female nonsmoker tables designated as "1980 CSO-NB" and "1980 CET-NB" Tables.

NC: 60% Male 40% Female nonsmoker tables designated as "1980 CSO-NC" and "1980 CET-NC" Tables.

ND: 50% Male 50% Female nonsmoker tables designated as "1980 CSO-ND" and "1980 CET-ND" Tables.

NE: 40% Male 60% Female nonsmoker tables designated as "1980 CSO-NE" and "1980 CET-NE" Tables.

NF: 20% Male 80% Female nonsmoker tables designated as "1980 CSO-NF" and "1980 CET-NF" Tables.

NG: 0% Male 100% Female nonsmoker tables designated as
"1980 CSO-NG" and "1980 CET-NG"
Tables.

Tables SA, SG, NA, and NG are not acceptable as blended tables unless the proportion of persons insured is anticipated to be ninety percent or more of one sex or the other.

History: Effective February 1, 1985; amended effective October 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-33

STAFF COMMENT: Chapters 45-04-11, 45-05-05, and 45-05-06 contain all new material but are not underscored so as to improve readability.

CHAPTER 45-04-11
REINSURANCE TRANSACTIONS BY LICENSED LIFE INSURERS

Section	
45-04-11-01	Financial Statement Prohibitions
45-04-11-02	Financial Statement Requirements
45-04-11-03	Financial Statement Exceptions

45-04-11-01. Financial statement prohibitions.

1. No licensed life insurer shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with this department if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:
 - a. The primary effect of the reinsurance agreement is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a "risk charge" and the agreement does not provide for mortality, morbidity, or surrender benefit participation by the reinsurer consistent with its participation in the deficiency or excess interest portion of the policies reinsured;
 - b. The reserve credit taken by the ceding insurer is in excess of the actuarial reserve necessary, under the North Dakota insurance law or rules, including actuarial interpretations or standards adopted by the department, to support the policy obligations transferred under the reinsurance agreement;
 - c. The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against prior years' losses nor payment by the ceding insurer of

an amount equal to prior years' losses upon voluntary termination of inforce reinsurance by that ceding insurer shall be considered such a reimbursement to the insurer for negative experience;

- d. The ceding insurer can be deprived of surplus at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the insurer for nonpayment of reinsurance premiums shall not be considered to be such a deprivation of surplus;
 - e. The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded; or
 - f. No cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements prior to the termination date of the agreement made only in a "reinsurance account", and no funds in such account are available for the payment of claims.
2. Notwithstanding subsection 1, a licensed life insurer may, with the prior approval of the commissioner, take such reserve credit as the commissioner may deem consistent with the insurance law or rules, including actuarial interpretations or standards adopted by the department.

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-04, 26.1-05-19, 26.1-05-32

45-04-11-02. Financial statement requirements.

1. No reinsurance agreement or amendment to any reinsurance agreement may be used to reduce any liability or to establish any asset in any financial statement filed with this department, unless the agreement, amendment, or a letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.
2. In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding ninety days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-04, 26.1-05-19, 26.1-05-32

45-04-11-03. Financial statement exceptions. Notwithstanding section 45-04-11-01, licensed life insurers may continue to reduce liabilities or establish assets in financial statements filed with this department for reinsurance ceded under types of reinsurance agreements described in section 45-04-11-01, provided:

1. The agreements were executed and in force prior to October 1, 1989;
2. No new business is ceded under the agreements after October 1, 1989;
3. The reduction of the liability or the asset established for the reinsurance ceded is reduced to zero by December 31, 1992, or such later date approved by the commissioner as a result of an application made by the ceding insurer prior to December 31, 1989;
4. The reduction of the liability or the establishment of the asset is otherwise permissible under all other applicable provisions of the insurance law or rules, including actuarial interpretations or standards adopted by the department; and
5. The insurance department is notified, within sixty days following October 1, 1989, of the existence of such reinsurance agreements and all corresponding credits taken in the ceding insurer's 1988 annual statement.

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-04, 26.1-05-32, 26.1-05-19

CHAPTER 45-05-05 RISK RETENTION AND PURCHASING GROUPS

Section	
45-05-05-01	Definitions
45-05-05-02	Financial Statements, Reports, Examinations
45-05-05-03	Risk Retention Groups Not Chartered in This State - Registration
45-05-05-04	Liability Purchasing Group Notice of Intent
45-05-05-05	Updates and Amendments
45-05-05-06	Risk Retention Group Representatives and Purchasing Group Representatives
45-05-05-07	Group Location
45-05-05-08	Insurance Purchase
45-05-05-09	Risk Retention Group Representative or Purchasing Group Representative Memorandum
45-05-05-10	Direct Production
45-05-05-11	Solicitation by Nonresident
45-05-05-12	Severability

45-05-05-01. Definitions. As used in this chapter:

1. "Authorized to transact insurance in this state" and "admitted" means an insurer authorized by a subsisting certificate of authority issued by the commissioner to transact insurance in this state.
2. "Commissioner" means the insurance commissioner of North Dakota.
3. "Federal Liability Risk Retention Act of 1986" means that federal legislation which authorized qualified individuals or organizations to form special association insurance captives or to join together to purchase liability insurance on a group basis enacted as 15 U.S.C. 3901, et seq.
4. "Liability insurance coverage" means liability insurance policy or endorsement forms under which a liability risk retention group or liability insurer may undertake to indemnify a risk retention group or purchasing group member against liability arising from similar hazards or risk contingencies including, but not limited to, those liability insurance coverages commonly referred to in the industry as products-completed operations' liability, liquor liability, hospital professional liability, physicians', surgeons', and dentists' liability, lawyers' professional liability, elevator liability, storekeepers' liability, governmental entity general liability, public officials' errors and omissions, school board errors and omissions, directors' and officers' errors and omissions, oilfield general liability, day care general liability, outfitters' and guides' general liability, recreational area general liability, long haul truckers' liability, garage liability, pollution liability, etc.
5. "Purchasing group" means any group meeting the requirements of a purchasing group contained in North Dakota Century Code chapter 26.1-46.
6. "Purchasing group representative" means any individual, partnership, or corporation appointed by a purchasing group for the purpose of providing insurance to the members of the purchasing group or for the purpose of soliciting members for the purchasing group.
7. "Risk retention group" means any group meeting the requirements of a risk retention group contained in North Dakota Century Code chapter 26.1-46.
8. "Risk retention group representative" means any individual, partnership, or corporation appointed by a risk retention

group for the purpose of providing insurance to the members of the risk retention group.

History: Effective October 1, 1989.
General Authority: NDCC 26.1-46-13, 28-32-02
Law Implemented: NDCC 26.1-46

45-05-05-02. Financial statements, reports, examinations. Any risk retention group doing business in this state shall submit to the commissioner all of the following:

1. By March first of each year, a copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist according to criteria established by the national association of insurance commissioners.
2. A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination.
3. A copy of any audit performed with respect to the risk retention group.
4. This section does not apply to risk retention groups doing business in this state which have fewer than twenty-six resident members or insureds.

History: Effective October 1, 1989.
General Authority: NDCC 26.1-46-13, 28-32-02
Law Implemented: NDCC 26.1-46

45-05-05-03. Risk retention groups not chartered in this state - Registration.

1. Any risk retention group chartered in a state other than North Dakota and not holding a subsisting certificate of authority issued by the commissioner of the state of North Dakota, before offering liability insurance as a risk retention group on any risk located, resident or to be performed in this state, shall:
 - a. Register with the commissioner in the form and manner prescribed by the commissioner, a statement sworn to by the president or chief executive officer and the secretary of the risk retention group providing such information and documentation as the commissioner shall require pursuant to North Dakota Century Code section 26.1-46-03.

- b. File with the commissioner a copy of the risk retention group's charter showing that it has been organized primarily for the purpose of assuming and spreading all, or any portion, of the liability exposure of the group members.
 - c. File with the commissioner a copy of the risk retention group's certificate of authority or license issued in its state of domicile authorizing it to transact business as an insurance company.
 - d. File with the commissioner a copy of the risk retention group's most recent annual financial statement which must be certified by an independent public accountant.
2. Any risk retention group chartered in a state other than North Dakota and not holding a subsisting certificate of authority issued by the commissioner of the state of North Dakota which has registered with the commissioner pursuant to Section 3(d) of the Federal Liability Risk Retention Act of 1986 or North Dakota Century Code section 26.1-46-03 prior to October 1, 1989, shall comply with subsection 1 by registering in the form prescribed by subsection 1 on or before December 1, 1989.
 3. The statement of registration appointing the commissioner as agent for the purpose of receiving legal documents and service of process, required in North Dakota Century Code sections 26.1-46-03 and 26.1-46-07 shall be irrevocable, and must be in substantially the same form as that show in exhibit A.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-04. Liability purchasing group notice of intent.

1. Any purchasing group which intends to do business in this state, before soliciting any member to insure through the group any liability risk located, resident or to be performed in this state, shall furnish notice of its intent to do business to the commissioner, in the form and manner prescribed by the commissioner, sworn to by the president, chief executive officer, secretary, partner, trustee, or such other officer or party who, under the organizational plan of the group, has authority to bind the group with his signature, on forms the commissioner designates and furnishes, providing such information and documentation as the commissioner shall require pursuant to North Dakota Century Code section 26.1-46-07.
2. Any purchasing group which has filed with the commissioner its notice of intent to do business pursuant to Section 4(d)(1) of

the Federal Liability Risk Retention Act of 1986 or North Dakota Century Code section 26.1-46-07 prior to October 1, 1989, shall comply with subsection 1 by registering in the form prescribed by subsection 1 on or before December 1, 1989.

History: Effective October 1, 1989.
General Authority: NDCC 26.1-46-13, 28-32-02
Law Implemented: NDCC 26.1-46

45-05-05-05. Updates and amendments.

1. Any risk retention group or purchasing group authorized to do business in the state of North Dakota shall notify the commissioner in writing within thirty days of any changes in its operations, which result in the registration or notice then on file containing false, inaccurate, or misleading information, including the solicitation or writing of any liability insurance coverage in addition to that for which it is registered, so as to correct such false, inaccurate, or misleading information. The commissioner may request such additional information and documentation pertaining to such notice as the commissioner deems necessary provided, however, no such request shall delay the effective date of the notice.
2. Any risk retention group or purchasing group authorized to do business in the state of North Dakota, on or before March first of each year, by sworn affidavit, shall certify to the commissioner as to the continued accuracy of the information on file or as amended by notice filed pursuant to subsection 1, and as to its continued intent to be registered and do business in this state.

History: Effective October 1, 1989.
General Authority: NDCC 26.1-46-13, 28-32-02
Law Implemented: NDCC 26.1-46

45-05-05-06. Risk retention group representatives and purchasing group representatives.

1. License requirement. No person, resident or nonresident in this state, may act as or hold himself out in this state to be a risk retention group representative for a risk retention group, or a purchasing group representative for a purchasing group which solicits members for the purpose of selling liability insurance coverage, purchases liability insurance coverage for group members located within this state or otherwise does business in this state unless then licensed as such under these rules.
2. Any person, resident or nonresident in this state, acting as or holding himself out in this state to be a risk retention

group representative or a purchasing group representative must either:

- a. Hold a current North Dakota license as agent or broker, in the lines of insurance represented, and must be appointed by the risk retention group or purchasing group represented in North Dakota; or
 - b. Be the holder of a current North Dakota nonresident license as agent or broker in another state, in the lines of insurance represented, and must be appointed by the risk retention group or purchasing group represented in North Dakota.
3. Any person acting as a risk retention group representative or purchasing group representative in compliance with subdivision a or b of subsection 2 shall otherwise be subject to and comply with the provisions of North Dakota Century Code chapter 26.1-46 as they pertain to agents and brokers.
4. Exceptions to license requirement. Risk retention group representative and purchasing group representative for the purpose of licensing does not include:
- a. Any officer, director, owner, partner, trustee, or full-time salaried employee of a risk retention group or purchasing group; and
 - b. Any telemarketing or mass mailing organization or any radio or television station or network or, newspaper or magazine publisher or distributor which makes statements or carries advertisements for a risk retention group or purchasing group to the extent only general, nonrisk specific information is given concerning the Federal Liability Risk Retention Act, North Dakota Century Code chapter 26.1-46, and the risk retention group or purchasing group and no application for insurance is received, no underwriting information is taken, and no insurance rate or premium is quoted or collected.
5. Licensing of partnership or corporation.
- a. A partnership or corporation may be licensed as a risk retention group representative or purchasing group representative. Each general partner and each other individual authorized to act for the partnership and each individual authorized to act for the corporation must be named in the license or registered with the commissioner and shall qualify as through an individual licensee; and
 - b. The licensee shall promptly notify the commissioner of any changes among its members, directors, officers, and other individuals designated in or registered as to the license.

6. Risk retention group representative and purchasing group representative bond. Prior to issuance of an appointment as a risk retention group representative or purchasing group representative for any risk retention group or insurer not chartered in this state, the applicant shall file with the commissioner, and shall keep in force for as long as such an appointment remains in effect, a bond in favor of the state of North Dakota in the penal sum of one thousand dollars, with an authorized corporate surety the commissioner approves, conditioned that he will conduct business under his risk retention group or purchasing group license in accordance with North Dakota Century Code chapter 26.1-46 and this chapter and that he will promptly remit the taxes pursuant to North Dakota Century Code section 26.1-46-03. Any risk retention group representative or purchasing group representative licensed as a surplus line broker in the state of North Dakota and maintaining a bond pursuant to North Dakota Century Code section 26.1-26-18 or previously appointed by a risk retention group or insurer not chartered in this state group or unauthorized insurer and maintaining a bond pursuant to this section shall not be subject to any additional bond requirement. The aggregate liability of the surety for any claims on the bond may not exceed the penal sum of the bond.

The bond shall not be terminated unless not less than thirty days' prior written notice thereof is given to the licensee and filed with the commissioner.

History: Effective October 1, 1989.
General Authority: NDCC 26.1-46-13, 28-32-02
Law Implemented: NDCC 26.1-46

45-05-05-07. Group location. For the purposes of this chapter, a purchasing group must be deemed located in this state if any member of said group is located or resident in this state.

History: Effective October 1, 1989.
General Authority: NDCC 26.1-46-13, 28-32-02
Law Implemented: NDCC 26.1-46

45-05-05-08. Insurance purchase. Any purchasing group duly authorized to do business in the state of North Dakota may purchase insurance only from the following sources:

1. A risk retention group authorized to do business in this state.
2. An admitted insurance carrier.
3. An authorized surplus lines carrier listed on the commissioner's white list, only if the purchase is effected

through a licensed surplus lines broker who has been appointed by the purchasing group.

History: Effective October 1, 1989.
General Authority: NDCC 26.1-46-13, 28-32-02
Law Implemented: NDCC 26.1-46

45-05-05-09. Risk retention group representative or purchasing group representative memorandum. Any risk retention group representative or purchasing group representative effecting insurance on any risk located, resident or to be performed within or properly allocated to this state with an unauthorized risk retention group or unauthorized insurer, pursuant to the Federal Liability Risk Retention Act of 1986 and this chapter, shall file with the commissioner a summary memorandum, in a form the commissioner prescribes or accepts, setting forth the facts concerning the placement of such insurance so as to identify the coverage and the tax payable to the state relative thereto pursuant to North Dakota Century Code chapter 26.1-44. The risk retention group representative or purchasing group representative shall file this memorandum with the commissioner on or before April first of each year in which the premium or consideration is due. Any risk retention group representative or purchasing group representative may contract with the unauthorized risk retention group or unauthorized insurer or with a purchasing group for which it acts to provide for the unauthorized risk retention group, the unauthorized insurer, or the purchasing group filing this memorandum on behalf of the risk retention group representative or purchasing group representative in accordance with this section, provided the risk retention group representative or purchasing group representative notifies the commissioner of such delegation and files with the commissioner a copy of the contract authorizing such alternative method of filing prior to the effective date of such delegation.

History: Effective October 1, 1989.
General Authority: NDCC 26.1-46-13, 28-32-02
Law Implemented: NDCC 26.1-46

45-05-05-10. Direct production.

1. Any risk retention group required to register in this state pursuant to Section 3(d) of the Federal Liability Risk Retention Act of 1986 or section 45-05-05-02 which utilizes risk retention representatives in soliciting, negotiating, procuring, or providing liability insurance for its members located or resident within this state shall do so only through risk retention group representatives licensed in this state pursuant to North Dakota Century Code chapters 26.1-26, 26.1-44, and 26.1-46 and this chapter provided, however, nothing herein may be construed to prevent such a risk retention group from soliciting, negotiating, procuring, or providing liability insurance for its members located or

resident within this state directly through its officers, directors, owners, partners, trustees, or full-time salaried employees not so licensed in this state.

2. Any purchasing group required to file notice of its intent to do business in this state pursuant to Section 4(d)(1) of the Federal Liability Risk Retention Act of 1986, North Dakota Century Code section 26.1-46-07, or section 45-05-05-03 which utilizes purchasing group representatives in soliciting, negotiating, procuring, or providing liability insurance for its members located or resident within this state shall do so only through purchasing group representatives licensed in this state pursuant to North Dakota Century Code chapters 26.1-26, 26.1-44, and 26.1-46, and this chapter.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-11. Solicitation by nonresident. Risk retention groups and admitted carriers may appoint either resident or nonresident representatives to solicit, negotiate, procure, or provide liability insurance for its members located or resident within this state. However, a risk retention group or purchasing group which purchases insurance from a surplus lines carrier must appoint a resident surplus lines broker pursuant to the requirements of North Dakota Century Code section 26.1-26-17.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

45-05-05-12. Severability. If any section of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this chapter and the application of such section to other persons and circumstances shall not be affected thereby.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

STATE OF NORTH DAKOTA
INSURANCE DEPARTMENT
APPLICATION FOR REGISTRATION AS A PURCHASING GROUP

We, the undersigned President (or Chief Executive Officer) and Secretary, on behalf of _____, make
(Name of Purchasing Group)
application for registration in North Dakota as a Purchasing Group ("Group") and do hereby affirm that:

1. The Group is domiciled in the State of _____.
2. The Group's principal place of business (street and mailing address) is: _____

3. The Group is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises or operations (Give general description of business or activities engaged in by Group members): _____

4. The Group has as one of its purposes the purchase of liability insurance on a group basis.
5. The Group purchases such liability insurance only for its group members and only to cover their similar or related liability exposure, as described in item (3) above.
6. The Group intends to purchase the following lines and classifications of liability insurance: _____

7. The Group intends to purchase the liability insurance described in item (6) above from the following insurance company or companies (Give full name of company and state of domicile): _____

8. The name and address of the broker or agent licensed by the insurance commissioner through whom purchases in North Dakota will be effected are as follows: _____

9. The Group has designated the insurance commissioner of North Dakota to be its agent solely for the purpose of receiving service of legal documents.

10. The Group's federal identification number is: _____

We do hereby swear and affirm that the aforementioned statements and information are true and correct.

President or Chief Executive Officer

Secretary

Sworn to before me this _____
day of _____, 19__,

Notary Public
State of _____
My Commission Expires: _____

STATE OF NORTH DAKOTA
INSURANCE DEPARTMENT
APPLICATION FOR REGISTRATION AS
A RISK RETENTION GROUP
(FOREIGN)

We, the undersigned President (or Chief Executive Officer) and Secretary, on behalf of _____

_____ (Name must include the phrase "Risk Retention Group")
located at _____
make application for registration in North Dakota as a Risk Retention Group ("Group") and do hereby affirm that:

1. The primary activity of this Group consists of assuming and spreading all, or any portion, of the liability exposure of its Group members.
2. The Group is organized for the primary purpose of conducting the activity described under (1) above.
3. The Group is chartered and licensed as a liability insurance company under the laws of the State of _____, and is authorized to engage in the business of insurance under the laws of its chartering state.
4. The Group does not exclude any person from its membership in the Group solely to provide for members of the Group a competitive advantage over such a person.
5. Ownership of the Group consists of one or the other of the following (check one):

_____ the owners of the Group are only persons who comprise the membership of the Group and who are provided insurance by the Group;

_____ the sole owner of the Group is

_____ (Give name and address of organization)
an organization whose members only comprise the membership of the Group, and whose owners are only persons who comprise the membership of the Group and who are provided insurance by the Group.

6. The Group is composed of members who are engaged in the following described business or activities, which are similar or related with respect to the liability to which such members are exposed by virtue of related, similar, or common business, trade, produce, services, premises or operations (Give general

description of business or activities engaged in by Group members): _____

7. The activities of the Group do not include the provision of insurance other than:
 - a. liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and
 - b. reinsurance with respect to the similar or related liability exposure of another risk retention group (or a member of such other risk retention group) engaged in businesses or activities which qualify such other risk retention group (or member) under item (6) above for membership in this Group.
8. The Group will comply with the unfair claim settlement practices laws of North Dakota.
9. The Group will pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers under the laws of North Dakota.
10. The Group will participate, on a nondiscriminatory basis, in any mechanism established or authorized under the laws of North Dakota for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism.
11. The Group has designated the Insurance Commissioner of North Dakota to be its agent solely for the purpose of receiving service of legal documents or process.
12. The Group will submit to examination by the Insurance Commissioner to determine the Group's financial condition, if:
 - a. the insurance commissioner of the Group's chartering state has not begun or has refused to initiate an examination of the Group; and
 - b. any such examination by the Insurance Commissioner is coordinated so as to avoid unjustified duplication and unjustified repetition.
13. The Group will comply with a lawful order issued in a delinquency proceeding commenced by the Insurance Commissioner upon a finding of financial impairment, or in a voluntary dissolution proceeding.

14. The Group will comply with the laws of North Dakota concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.
15. The Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the insurance commissioner alleging that the Group is in hazardous financial condition or is financially impaired.
16. The Group will provide the following notice, in 10-point type, in any insurance policy issued by the Group:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

17. The Group has submitted to the insurance commissioner, as part of this application and before it has offered any insurance in North Dakota, a copy of the plan of operation or feasibility study which it has filed with the insurance commissioner of its chartering state. The plan or study submitted herewith discloses the name of the state in which the Group is chartered, as well as the Group's principal place of business, and such plan or study further includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the Group intends to offer. The Group will promptly submit to the Insurance Commissioner any revisions of such plan or study to reflect any changes therein including, but without limitation, additional lines of liability insurance which the Group intends to offer, and any change in the designation of the Group's chartering state.
18. The Group has submitted to the insurance commissioner, as part of this application, a copy of the Group's annual financial statement submitted to the state in which it is chartered as an insurance company. The annual financial statement has been certified by an independent public accountant and contains a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. Hereafter, the Group will submit its annual financial statement to the insurance commissioner by March 1 of each year.
19. The Group will not solicit or sell insurance to any person in North Dakota who is not eligible for membership in the Group.

20. The Group will not solicit or sell insurance in North Dakota, or otherwise operate in this state, if the Group is financially impaired or is in a hazardous financial condition.

21. The name and address of the broker(s) or agent(s) licensed by the insurance commissioner through whom purchases in North Dakota will be effected are as follows:

22. The Group's federal identification number is _____.

We do hereby swear and affirm that the aforementioned statements and information are true and correct.

President or Chief Executive Officer

Secretary

Sworn to before me this day of _____, 19__.

Notary Public, State of:
My Commission Expires:

EXHIBIT A

STATE OF NORTH DAKOTA

DEPARTMENT OF INSURANCE

REGISTRATION OF APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

KNOW ALL MEN BY THESE PRESENTS:

The _____ (name of group), a [risk retention] [purchasing] group authorized to transact liability insurance under the Federal Liability Risk Retention Act of 1986 and Chapter 26.1-46 of the North Dakota Century Code, domiciled in the State of _____ and whose principal place of business is located at _____ (address) _____ (city) _____ (state) _____ (zip code) does hereby constitute, designate and appoint the Insurance Commissioner of the State of North Dakota, and his successors in office, as its true and lawful agent to receive legal documents and service of process issued against said [risk retention] [purchasing] group in the State of North Dakota. This appointment shall be irrevocable, shall be binding upon the group, and its successors in interest, as to the assets and liabilities of the group and shall remain in full force and effect for so long as there is in force any contract or certificate insuring any member [of the risk retention group] [of the purchasing group] in the State of North Dakota or any obligation of the group arising out of its transactions in the State of North Dakota.

The [risk retention] [purchasing] group hereby designates the following person as the person to whom legal documents and process against it served shall be forwarded by the Insurance Commissioner:

_____, _____ (name), _____ (title)
 _____ (company or group name), _____ (street address)
 _____ (city), _____ (state) _____ (zip)

IN WITNESS WHEREOF, the said [risk retention] [purchasing] group has caused this appointment to be duly executed this ____ day of _____, 19__.

 BY: _____ (name of group)
 [President, Chief Executive Officer, Secretary, Partner, Trustee, or title of the officer or party who under the organization of the group has authority to bind the group with his signature]

(SEAL)

State of _____)
 County of _____) ss

The foregoing instrument was acknowledged and executed before me
this _____ day of _____, 19__.

NOTARY PUBLIC

(SEAL)

My Commission Expires: _____

CHAPTER 45-05-06
RISK MODIFICATION PLAN REGULATION

Section	
45-05-06-01	Scope
45-05-06-02	Definitions
45-05-06-03	Rate Modification Plans
45-05-06-04	Experience Rating Plans
45-05-06-05	Reporting of Pertinent Information
45-05-06-06	Rate Compliance Examinations
45-05-06-07	Filing of Rate Modification Plans
45-05-06-08	Separability
45-05-06-09	Dissemination

45-05-06-01. **Scope.** This chapter applies to all commercial lines of insurance (including farmowners) except those excepted risks described in North Dakota Century Code section 26.1-30.1-01 and for plans such as Automobile Insurance Plan Services Office (AIPSO), Market Assistance Plan (MAP), Joint Underwriting Association (JUA), North Dakota Insurance Reserve Fund (NDIRF), and state property insurance plan (FAIR plans) are exempt from this regulation.

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-02. **Definitions.**

1. "Experience rating plan" means any rating plan or system whereby a manual rate for insurance is adjusted or modified based on the past loss experience of the insured.
2. "Manual rate" means a rate, designed to apply on a generic basis to similar risks within the same class, filed by an insurer or rating organization with the department of insurance and made part of the rating manual used by an insurer or rating organization.
3. "Rate modification plan" means a rating plan or procedure which provides a listing of various risk characteristics or conditions and a range of modification factors which may be applied for these characteristics or conditions to the manual

rate of a particular insurance risk. The effect of the modification factor is to increase (debit) or decrease (credit) the manual rate. Rate modification plans include,

but are not limited to, plans commonly called schedule rating plans and individual risk premium modification plans.

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-03. Rate modification plans. Rate modification plans, justified according to the standards herein, are allowed by the insurance code. However, the commissioner has determined that the use of unjustified rate modification plans is not reasonable, is not objective, and is unfairly discriminatory. Therefore, the use of unjustified rate modification plans in rating of commercial property and casualty insurance risks located in North Dakota is prohibited.

The following elements must be considered in determining whether or not a rate modification plan, or its use, is justified:

1. Rate modification plans must be used to acknowledge variance in risk characteristics and not merely to gain competitive advantage or for any other purpose.
2. Rate modification plans must be based only on rating characteristics not already reflected in the manual rates. The plans must clearly indicate the objective criteria to be used.
3. Individual underwriting files must contain the specific criteria and document the particular circumstances of the risk that support each debit or credit. This documentation must exist in the individually rated risk file to enable the commissioner to verify compliance with this chapter. Documentation may include, but is not limited to, inspection reports, photographs, agent observations and findings, insured's formal safety plans, premises evaluations, and narrative reports covering other aspects of the risk. Intentional or willful misclassification of a risk constitutes a modification without justification.
4. Any rate modification plan designed to be applied simultaneously to property, liability, or vehicle coverage must contain reasonable factors that give appropriate recognition to the distinct exposures involved in such coverages.
5. Once a company has filed a rate modification plan, its use is mandatory. The plan must be applied uniformly in a nondiscriminatory manner for all eligible classes of risk.

6. The application of any rate modification plan may not result in debits or credits that exceed twenty-five percent. Modifications generated by experience rating plans or based upon company expense experience are not subject to this limitation.
7. Once a rate modification plan has been applied to a risk and a credit or debit established, no change in the established credit or debit can be made without appropriate justification and documentation.
8. Any rate modification plan must provide that when a risk is rated below average (debited) an insured or applicant, upon request, will be advised by the insurer of the factors which resulted in the adverse rating so that the insured or applicant will be fairly apprised of any corrective action that might be appropriate with respect to the insurance risk.

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-04. Experience rating plans. Exposure, premium, and loss figures used in the calculation of experience rating plans must be verifiable and justifiable.

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-05. Reporting of pertinent information. Upon the request of the commissioner, an insurer authorized to write any insurance in this state to which this chapter applies shall submit to the commissioner the number of policies by line issued with rate modification as defined in subsection 3 of section 45-05-07-02 and the proportion of policies so issued to all policies written by line by the company. A rating organization may file the data on behalf of the insurer.

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-06. Rate compliance examinations. To determine compliance with this chapter the commissioner may order a rate compliance examination be made of any insurer to which this chapter applies. Any examination must be conducted pursuant to North Dakota Century Code chapter 26.1-03.

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-07. Filing of rate modification plans. Within one hundred eighty days of October 1, 1989, each insurer to which this chapter applies shall refile its rate modification plans in accordance with the provisions of this chapter. At the end of the one hundred eighty-day period all prior rate modification plans filed with the department of insurance will be considered obsolete. Subsequent changes in any insurer's rate modification plan will not be considered to be filed with the commissioner unless the complete plan, as modified, is submitted.

History: Effective October 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-08. Separability. If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision shall not be affected thereby.

History: Effective October 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-09. Dissemination. Each insurer or rating organization is instructed to distribute a copy of this chapter to all personnel engaged in activities requiring knowledge of this chapter, and to instruct them as to its scope and operation.

History: Effective October 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-25, 26.1-30-19

45-06-01-01. Applicability and scope.

1. Except as otherwise specifically provided, this chapter shall apply to:
 - a. All medicare supplement policies and subscriber contracts delivered or issued for delivery in this state on or after January 1, 1982.
 - b. All certificates issued under group medicare supplement policies or subscriber contracts, which have been delivered or issued for delivery in this state on or after January 1, 1982.

2. This chapter shall not apply to-

- a. ~~Policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this chapter.~~
- b. Medicare medicare supplement policies issued to employees or members as additions to franchise plans in existence on January 1, 1982.

History: Effective January 1, 1982; amended effective October 1, 1989.
General Authority: NDCC 26.1-36-32, 26.1-36-33, 26.1-36-34, 26.1-36-35, 26.1-36-38
Law Implemented: NDCC 26.1-36-31

45-06-01-03. Policy definitions and terms. No insurance policy or subscriber contract may be advertised, solicited, or issued for delivery in this state as a medicare supplement policy unless such policy or subscriber contract contains definitions or terms which conform to the requirements of this section.

1. "Accident", "accidental injury", or "accidental means" must employ "result" language and may not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.
 - a. The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."
 - b. The definition may provide that injuries may not include injuries for which benefits are provided under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.
2. "Applicant" means:
 - a. In the case of an individual medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits; and
 - b. In the case of a group medicare supplement policy or subscriber contract, the proposed certificate holder.

3. "Benefit period" or "medicare benefit period" may not be defined as more restrictive than as that defined in the medicare program.
- ~~3-~~ 4. "Certificate" means any certificate issued under a group medicare supplement policy which certificate has been delivered or issued for delivery in this state.
5. "Convalescent nursing home", "extended care facility", or "skilled nursing facility" must be defined in relation to its status, facilities, and available services.
- a. The definition of such home or facility may not be more restrictive than one requiring that it:
- (1) Be operated pursuant to law;
 - (2) Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;
 - (3) Provide continuous twenty-four hours a day nursing service by or under the supervision of a registered graduate professional nurse; and
 - (4) Maintains a daily medical record of each patient.
- b. The definition of such home or facility may provide that such term may not be inclusive of:
- (1) Any home, facility, or part thereof used primarily for rest.
 - (2) A home or facility for the aged or for the care of drug addicts or alcoholics (subject to North Dakota Century Code chapter 26.1-36).
 - (3) A home or facility primarily used for the care and treatment of mental diseases, or disorders, or custodial or educational care (subject to North Dakota Century Code chapter 26.1-36).
- ~~4-~~ 6. "Health care expense" means expenses of health maintenance organizations associated with the delivery of health care services which are analogous to incurred losses of insurers. Such expenses may not include home office and overhead costs, advertising costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, or claims processing costs.
7. "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its

accreditation by the joint commission on accreditation of hospitals.

a. The definition of hospital may not be more restrictive than one requiring that the hospital:

- (1) Be an institution operated pursuant to law;
- (2) Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made; and
- (3) Provide twenty-four-hour nursing service by or under the supervision of registered graduate professional nurses.

b. The definition of hospital may state that such term may not be inclusive of:

- (1) Convalescent homes, convalescent, rest, or nursing facilities.
- (2) Facilities primarily affording custodial, educational, or rehabilitatory care.
- (3) Facilities for the aged, drug addicts, or alcoholics.
- (4) Any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.

~~5-~~ 8. "Medicare" must be defined in the policy. Medicare may be substantially defined as "The Health Insurance for the Aged Act, title XVIII of the Social Security Amendments of 1965 as then constituted or later amended", or "Title I, part I of Public Law No. 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

~~6-~~ 9. "Medicare eligible expenses" means health care expenses of the kinds covered by medicare, to the extent recognized as reasonable by medicare. Payment of benefits by insurers for

medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to medicare claims.

~~7-~~ 10. "Medicare supplement policy" means a group or individual policy of [accident and sickness] insurance or a subscriber contract [of hospital and medical service associations or health maintenance organizations] which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare by reason of age.

11. "Mental or nervous disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

~~8-~~ 12. "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (RN), a licensed practical nurse (LPN), or a licensed vocational nurse (LVN). If the words "nurse", "trained nurse", or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualified under such terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state.

~~9-~~ 13. "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician". The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

~~10-~~ 14. "Sickness" may not be defined to be more restrictive than the following: "Sickness means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

History: Effective January 1, 1982; amended effective November 1, 1987; October 1, 1989.

General Authority: NDCC 26.1-36-32, 26.1-36-33, 26.1-36-34, 26.1-36-35, 26.1-36-38

Law Implemented: NDCC 26.1-36

45-06-01-04. Prohibited policy provisions.

1. No insurance policy or subscriber contract may be advertised, solicited, or issued for delivery in this state as a medicare supplement policy if such policy or subscriber contract limits or excludes coverage by type of illness, accident, treatment, or medical condition, except as follows:
 - a. Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet.
 - b. Mental or emotional disorders, alcoholism, and drug addiction (subject to North Dakota Century Code chapter 26.1-36).
 - c. Illness, treatment, or medical condition arising out of:
 - (1) War or act of war (whether declared or undeclared); participation in a felony, riot, or insurrections; or service in the armed forces or units auxiliary thereto.
 - (2) Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury.
 - (3) Aviation.
 - d. Cosmetic surgery, except that "cosmetic surgery" does not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection, or other diseases of the involved part.
 - e. Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment, or subluxation of or in the vertebral column.
 - f. Treatment provided in a governmental hospital; benefits provided under medicare or other governmental program (except medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law; services rendered by employees of hospitals, laboratories, or other institutions; or services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.
 - g. Dental care or treatment.

- h. Eyeglasses, hearing aids, and examination for the prescription or fitting thereof.
- i. Rest cures, custodial care, transportation, and routine physical examinations.
- j. Territorial limitations.

However, medicare supplement policies may not contain, when issued, limitations or exclusions of the type enumerated in subdivision a, e, i, or j that are more restrictive than those of medicare. Medicare supplement policies may exclude coverage for any expense to the extent of any benefit available to the insured under medicare.

- 2. No medicare supplement policy may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.
- 3. The terms "medicare supplement", "medigap", and words of similar import may not be used unless the policy is issued in compliance with this chapter.
- 4. No medicare supplement insurance policy, contract, or certificate in force in this state may contain benefits which duplicate benefits provided by medicare.

History: Effective January 1, 1982; amended effective October 1, 1989.
General Authority: NDCC 26.1-36-32
Law Implemented: NDCC 26.1-36-32

45-06-01-05. Minimum benefit standards. No insurance policy or subscriber contract may be advertised, solicited, or issued for delivery in this state as a medicare supplement policy which does not meet the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

- 1. General standards. The following standards apply to medicare supplement policies and are in addition to all other requirements of this chapter.
 - a. A medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

- b. A medicare supplement policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
- c. A medicare supplement policy shall provide that benefits designed to cover cost-sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.
- d. A medicare supplement policy may not be canceled or nonrenewed by the insurer solely on the grounds of deterioration of health.
- e. Termination of a medicare supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.
- f. A "noncancelable", "guaranteed renewable", or "noncancelable and guaranteed renewable" medicare supplement policy may not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination coverage of the insured, other than the nonpayment of premium.

2. Minimum benefit standards.

- a. Coverage of Part A medicare eligible expenses for hospitalization to the extent not covered by medicare from the sixty first day through ninetieth day in any medicare benefit period for either all or none of the medicare Part A inpatient hospital deductible amount.
- b. Coverage of Part A medicare eligible expenses incurred as daily hospital charges during use of medicare's lifetime hospital inpatient reserve days for the daily copayment amount of medicare Part A eligible expenses for the first eight days per calendar year incurred for skilled nursing facility care.
- c. Upon exhaustion of all medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent of all medicare Part A eligible expenses for hospitalization not covered by medicare subject to a lifetime maximum benefit of an additional three hundred sixty five days. Coverage for the reasonable cost of the first three pints of blood (or equivalent quantities of

packed red blood cells, as defined under federal regulations) under medicare Part A unless replaced in accordance with federal regulations.

d. Coverage of twenty percent of the amount of medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of two hundred dollars of such expenses and to a maximum benefit of at least five thousand dollars per calendar year. as follows:

(1) Until January 1, 1990, coverage for twenty percent of the amount of medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of two hundred dollars of such expenses and to a maximum benefit of at least five thousand dollars per calendar year.

(2) Effective January 1, 1990, coverage for the copayment amount [twenty percent] of medicare eligible expenses excluding outpatient prescription drugs under medicare Part B regardless of hospital confinement up to the maximum out-of-pocket amount for medicare Part B after the medicare deductible amount.

e. Effective January 1, 1990, coverage under medicare Part B for the medicare reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations.

f. Effective January 1, 1990, coverage for the copayment amount [twenty percent] of medicare eligible expenses for covered home intravenous (IV) therapy drugs (as determined by the secretary of health and human services) subject to the medicare outpatient prescription drug deductible amount, if applicable.

g. Effective January 1, 1990, coverage for the copayment amount [---- percent] of medicare eligible expenses for outpatient drugs used in immunosuppressive therapy, subject to the medicare outpatient prescription drug deductible, if applicable.

3. Medicare eligible expenses. Medicare eligible expenses mean health care expenses of the kinds covered by medicare, to the extent recognized as reasonable by medicare. Payment of benefits by insurers for medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to medicare claims.

4. Federal standards. Every entity providing medicare supplement policies or contracts shall comply with all provisions of Section 4081 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100-203]. Compliance with the requirements set forth in Public Law 100-203 must be certified on the medicare supplement insurance experience reporting form.
5. Intermediate care standards. Pursuant to subdivision 1 of subsection 9 of North Dakota Century Code section 26.1-04-03, every medicare supplement insurer offering convalescent nursing home, extended care facility, or skilled nursing facility coverage in excess of the one hundred fifty-day medicare benefit, must also cover intermediate care from the ninth day through extended care maximum period. This provision is not intended to duplicate medicare benefits.
6. Preexisting conditions standards. The policy or certificate of insurance providing medicare supplement benefits which is sold to a consumer in addition to another medicare supplement policy or which is sold to a consumer to replace such a policy may not contain a provision limiting payment of benefits due to preexisting conditions of the insured except if there is any time period remaining relating to the exclusion of coverage for preexisting conditions as specified in the underlying policy that remaining waiting period for coverage of preexisting conditions shall apply to the new policy unless the policy otherwise provides.

History: Effective January 1, 1982; amended effective October 1, 1989.

General Authority: NDCC 26.1-36-33

Law Implemented: NDCC 26.1-36-33

45-06-01-06. Loss ratio standards. Medicare supplement policies shall be expected to return to policyholders in the form of aggregate benefits under the policy, as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices:

1. At least seventy-five percent of the aggregate amount of premiums collected in the case of group policies; and
2. At least sixty percent of the aggregate amount of premiums collected in the case of individual policies.

For purposes of this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

3. All filings of rates and rating schedules must demonstrate that actual and expected losses in relation to premiums comply with the requirements of this section.
4. Every entity providing medicare supplement policies in this state shall file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by number of years of policy duration demonstrating that it is in compliance with the foregoing applicable loss ratio standards that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience.

For the purposes of this section, policy forms must be deemed to comply with the loss ratio standards if: (a) for the most recent year, the ratio of the incurred losses to earned premiums for policies or certificates which have been in force for three years or more is greater than or equal to the applicable percentages contained in this section; and (b) the expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this section. An expected third-year loss ratio which is greater than or equal to the applicable percentage must be demonstrated for policies or certificates in force less than three years.

5. As soon as practicable, but no later than sixty days prior to the effective date of medicare benefit changes required by the Medicare Catastrophic Coverage Act of 1988, every insurer, health care service plan, or other entity providing medicare supplement insurance or contracts in this state, except employers subject to the requirements of section 421 of the Medicare Catastrophic Coverage Act of 1988, shall file with the commissioner, in accordance with the applicable filing procedures of this state:
 - a. Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts. Such supporting documents as necessary to justify the adjustment must accompany the filing.

Every insurer, health care service plan, or other entity providing medicare supplement insurance or benefits to a resident of this state shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer, health care service plan, or other entity for such medicare supplement insurance policies or contracts. No premium adjustment

which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date or anniversary date. Premium adjustments must be in the form of refunds or premium credits and must be made no later than upon renewal if a credit is given, or within sixty days of the renewal date or anniversary date if a refund is provided to the premium payer. Premium adjustments must be calculated for the period commencing with medicare benefit changes.

- b. Any appropriate riders, endorsements, or policy forms needed to accomplish the medicare supplement insurance modifications necessary to eliminate benefit duplications with medicare. Any such riders, endorsements, or policy forms must provide a clear description of the medicare supplement benefits provided by the policy or contract.

History: Effective January 1, 1982; amended effective October 1, 1989.

General Authority: NDCC 26.1-36-34

Law Implemented: NDCC 26.1-36-34

45-06-01-07. Required disclosure provisions.

1. General rules.

- a. Medicare supplement policies shall include a renewal, continuation, or nonrenewal provision. The language or specifications of the provision must be consistent with the type of contract to be issued. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.
- b. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured or exercises a specifically reserved right under a medicare supplement policy or is required to reduce or eliminate benefits to avoid duplication of medicare benefits, all riders or endorsements added to a medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must, unless the benefits are required by the minimum standards for medicare supplement insurance policies, be agreed to in writing signed by the insured, except if the increased benefits or coverage is required by law. Where a separate

additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

- c. A medicare supplement policy which provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.
- d. If a medicare supplement policy contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations".
- e. Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within ~~ten~~ thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare shall have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.
- f. Insurers issuing accident and sickness policies, certificates, or subscriber contracts which provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person eligible for medicare shall provide to all applicants a medicare supplement "buyer's guide". Delivery of the buyer's guide shall be made whether or not such policies, certificates, or subscriber contracts are advertised, solicited, or issued as medicare supplement policies as defined in this chapter. Except in the case of direct response insurers, delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgment of receipt of the buyer's guide shall be obtained by the insurer. Direct response insurers shall deliver the buyer's guide to the applicant upon request but not later than at the time the policy is delivered.

g. Except as otherwise provided in section 45-06-01-07, the terms "medicare supplement", "medigap", and words of similar import shall not be used unless the policy is issued in compliance with section 45-06-01-05.

2. Notice requirements.

a. As soon as practicable, but no later than thirty days prior to the annual effective date of any medicare benefit changes, every insurer, health care service plan, or other entity providing medicare supplement insurance or benefits to a resident of this state shall notify its policyholders, contractholders, and certificate holders of modifications it has made to medicare supplement insurance policies or contracts in a format acceptable to the commissioner. For the years 1989 and 1990 and if prescription drugs are covered in 1991, such notice must be in a format prescribed by the commissioner or in the format prescribed in appendixes A, B, and C if no other format is prescribed by the commissioner. In addition, such notice must:

(1) Include a description of revisions to the medicare program and a description of each modification made to the coverage provided under the medicare supplement insurance policy or contract; and

(2) Inform each covered person as to when any premium adjustment is to be made due to changes in medicare.

b. The notice of benefit modifications and any premium adjustments must be in outline form and in clear and simple terms so as to facilitate comprehension.

c. Such notices may not contain or be accompanied by any solicitation.

3. Outline of coverage requirements for medicare supplement policies.

a. Insurers issuing medicare supplement policies for delivery in this state shall provide an outline of coverage to all applicants at the time application is made and, except for direct response policies, shall obtain an acknowledgment of receipt of such outline from the applicant.

b. If an outline of coverage is provided at the time of application and the medicare supplement policy or certificate is issued on a basis which would require revision of the outline of coverage delivered at the time of application, a substitute outline of coverage properly describing the policy or certificate actually issued must accompany such policy or certificate when it is delivered

and contain the following statement, in no less than twelve point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

- c. The outline of coverage provided to applicants pursuant to this subsection shall be in the form prescribed below:

(COMPANY NAME)
OUTLINE OF MEDICARE
SUPPLEMENT COVERAGE

- (1) Read your Policy Carefully -- This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!
- (2) Medicare Supplement Coverage -- Policies of this category are designed to supplement medicare by covering some hospital, medical, and surgical services which are partially covered by medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicine (delete if such coverage is provided).
- (3) (a) (for agents):

Neither (insert company's name) nor its agents are connected with medicare.

(b) (for direct responses):

(insert company's name) is not connected with medicare.
- (4) (A brief summary of the major benefit gaps in medicare Parts A and B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles, as appropriate), provided by the medicare supplement coverage in the following order):

SERVICE PAYS	YOU PAY	BENEFIT	MEDICARE PAYS	THIS POLICY
HOSPITALIZATION... semiprivate room and board, general nursing, and miscellaneous hospital services and supplies.		First 60 days	All but \$ ← →	
		61st to 90th day	All but \$ ← → a day	
	Includes meal, special care units, drugs, lab tests, diagnostic x-rays, medical supplies, operating and recovery room, anesthesia, and rehabilitation services.	91st to 150th day	All but \$ ← → a day	
		Beyond 150 days	Nothing	
POSTHOSPITAL SKILLED NURSING CARE... In a skilled or intermediate nursing care facility approved by medicare, you must have been in a hospital for at least three days and enter the facility within fourteen days after hospital discharge.		First 20 days	% of costs	
		Additional 80 days	All but \$ ← → a day	
		Beyond 100 days	Nothing	
MEDICAL EXPENSES		Physician's services inpatient and outpatient medical services and supplies at a hospital, physical and speech therapy, and ambulance.	% of reasonable charge (after \$ ← → deductible)	

(5) (Statement that the policy does or does not cover the following:→)

(a) Private duty nursing.

- (b) Skilled nursing home care costs (beyond what is covered by medicare).
 - (c) Custodial nursing home care costs.
 - (d) Home health care above number of visits covered by medicare.
 - (e) Physician charges (above medicare's reasonable charge).
 - (f) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay).
 - (g) Care received outside of United States of America.
 - (h) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.
- (6) (A description of any policy provision which excludes, eliminates, resists, reduces, limits, delays, or in any other manner operates to qualify payments of the benefits described in paragraph 4, including conspicuous statements.)
- (a) (That the chart summarizing medicare benefits only briefly describes such benefits.)
 - (b) (That the health care financing administration or its medicare publications should be consulted for further details and limitations.)
- (7) (A description of policy provisions respecting renewability or continuation of coverage, including any reservation or rights to change premium.)
- (8) The amount of premium for this policy.
- (XSubstitute "Certification" for "policy" where appropriate.)

THIS POLICY
PAYS

YOU PAY

DESCRIPTION

SERVICE

PART A

INPATIENT HOSPITAL SERVICES:

Semi-Private Room & Board
Miscellaneous Hospital Services
& Supplies, such as Drugs,
X-Rays, Lab Tests & Operating Room

SKILLED NURSING FACILITY CARE

BLOOD

PARTS A & B

Home Health Services

PART B

MEDICAL EXPENSE:

Services of a Physician/
Outpatient Services
Medical Supplies other than
Prescribed Drugs

BLOOD

MAMMOGRAPHY SCREENING

OUT-OF-POCKET MAXIMUM

PRESCRIPTION DRUGS

MISCELLANEOUS

Home IV-Drug Therapy
Immunosuppressive Drugs
Respite Care Benefits

IN ADDITION TO THIS OUTLINE OF COVERAGE, [INSURANCE COMPANY NAME] WILL SEND AN ANNUAL NOTICE TO YOU 30 DAYS PRIOR TO THE EFFECTIVE DATE OF MEDICARE CHANGES WHICH WILL DESCRIBE THESE CHANGES AND THE CHANGES IN YOUR MEDICARE SUPPLEMENT COVERAGE.

Medicare Supplement Minimum Standards Regulations

(5.) The following charts shall accompany the outline of coverage:

Part A				
MEDICARE BENEFITS IN				
Service	1988	1989	1990	1991
PART A				
Inpatient Hospital Services:	All but \$540 for first 60 days/benefit period	All but (\$564) deductible for an unlimited number of days/calendar year	All but Part A deductible for an unlimited number of days/calendar year	All but Part A deductible for an unlimited number of days/calendar year
Semi-Private Room & Board	All but \$135 a day for 61 st-90th days/benefit period			
Miscellaneous Hospital Services & Supplies, such as Drugs, X-rays, Lab Tests & Operating Room	All but \$270 a day for 91 st-150th days (if the individual chooses to use 60 nonrenewable lifetime reserve days) Nothing beyond 150 days			
Skilled Nursing Facility Care	100% of costs for 1 st 20 days (after a 3 day prior hospital confinement) All but \$87.50 a day for - 100th days Nothing beyond 100 days	80% of Medicare reasonable costs for first 8 days per calendar year w/out prior hospitalization requirement 100% of costs thereafter up to 150 days/calendar year	80% for first 8 days/calendar year 100% for 9th-150th day/calendar year	80% for first 8 days/calendar year 100% for 9th-150th day/calendar year
Blood	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period	Pays all costs except payment of deductible (equal to costs for first 3 pints) each calendar year. Part A blood deductible reduced to the extent paid under Part B	All but blood deductible (equal to costs for first 3 pints)	All but blood deductible (equal to costs for first 3 pints)

Part B

MEDICARE BENEFITS IN

Service	1988	1989	1990	1991
Parts A & B:				
Home Health Services	Intermittent skilled nursing care and other services in the home (daily skilled nursing care for up to 21 days or longer in some cases) — 100% of covered services and 80% of durable medical equipment under both Parts A & B	Same as '88	Intermittent skilled nursing care for up to 7 days a week for up to 38 days allowing for continuation of services under unusual circumstances; other services, — 100% of covered services and 80% of durable medical equipment under both Parts A & B	Same as '90
PART B				
Medical Expense: Services of a Physician/Outpatient Services	80% of reasonable charges after an annual \$75 deductible	80% after annual \$75 deductible	80% of reasonable charges after \$75 annual deductible until out-of-pocket maximum is reached. 100% of reasonable charges are covered for remainder of calendar year	Same as '90
Medical Supplies Other than Prescribed Drugs				
Blood	80% of costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period after \$75 deductible	Pays 80% of all costs except payment of deductible (equal to costs for first 3 pints) each calendar year	Same as '89	Same as '89
Mammography Screening			80% of approved charge for elderly and disabled Medicare beneficiaries - exams available every other year for women 65 & over	Same as '90
Out-of-Pocket Maximum			\$1,370 consisting of Part B \$75 deductible, Part B blood deductible and 20% co-insurance	\$1,370-will be adjusted annually by Secretary of Health and Human Services
Outpatient Prescription Drugs			There is a \$550 total deductible applicable to home IV drug and immunosuppressive drug therapies as noted below	Covered after \$600 deductible subject to 50% co-insurance

Medicare Supplement Minimum Standards Regulation

MEDICARE BENEFITS IN		Part B (cont'd)		
Service	1988	1989	1990	1991
PART B				
Home IV-Drug Therapy			80% of IV therapy drugs subject to \$550 deductible (deductible waived if home therapy is a continuation of therapy initiated in a hospital)	80% of IV therapy drugs subject to standard drug deductible (deductible waived if home therapy is a continuation of therapy drugs initiated in a hospital)
Immunosuppressive Drug Therapy	80% of costs during first year following a covered organ transplant (no special drug deductible; only the regular Part B deductible)	Same as '88	Same as '88 for first year following covered transplant; 50% of costs during 2nd and following years (subject to \$550 deductible)	Same as '90 (subject to \$600 deductible)
Respite Care Benefit			In-home care for chronically dependent individual covered for up to 80 hours after either the out-of-pocket limit or the outpatient drug deductible has been met	Same as '90

(6.) Statement that the policy does or does not cover the following:

- (a) Private duty nursing;
- (b) Skilled nursing home care costs (beyond what is covered by Medicare);
- (c) Custodial nursing home care costs;
- (d) Intermediate nursing home care costs;
- (e) Home health care above number of visits covered by Medicare;
- (f) Physician charges (above Medicare's reasonable charges);
- (g) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);
- (h) Care received outside the U.S.A.;
- (i) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.

- (6) Statement that the policy does or does not cover the following:
- (a) Private duty nursing;
 - (b) Skilled nursing home care costs (beyond what is covered by medicare);
 - (c) Custodial nursing home care costs;
 - (d) Intermediate nursing home care costs;
 - (e) Home health care above number of visits covered by medicare;
 - (f) Physician charges (above medicare's reasonable charges);
 - (g) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);
 - (h) Care received outside the United States of America;
 - (i) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.
- (7) (A description of any policy provision which excludes, eliminates, resists, reduces, limits, delays, or in any other manner operates to qualify payments of the benefits described in paragraph 4, including conspicuous statements:)
- (a) (That the chart summarizing medicare benefits only briefly describes such benefits.)
 - (b) (That the health care financing administration or its medicare publications should be consulted for further details and limitations.)
- (8) (A description of policy provisions respecting renewability or continuation of coverage, including any reservation or rights to change premium.)
- (9) The amount of premium for this policy.

(*Substitute "Certification" for "policy" where appropriate.)

~~3-~~ 4. Notice regarding policies or subscriber contracts which are not medicare supplement policies.

Any accident and sickness insurance policy, other than a medicare supplement policy; disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy; or other policy defined in subsection 2 of section 45-06-01-01, issued for delivery in this state to persons eligible for medicare by reason of age shall notify insureds under the policy or subscriber contract that the policy or subscriber contract is not a medicare supplement policy. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or if no outline of coverage is delivered, to the first page of the policy, certificate, or subscriber contract delivered to insureds. Such notice shall be in no less than twelve point type and shall contain the following language:

THIS (POLICY, CERTIFICATE, OR SUBSCRIBER CONTRACT) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for medicare review the medicare supplement buyer's guide available from the company.

History: Effective January 1, 1982; amended effective November 1, 1987; October 1, 1989.

General Authority: NDCC 26.1-36-35

Law Implemented: NDCC 26.1-36-35

45-06-01-08.1. Filing requirements for out-of-state group policies. Every insurer providing group medicare supplement insurance benefits to a resident of this state pursuant to subdivisions a and b of subsection 4 of North Dakota Century Code section 26.1-36-31 shall file a copy of the master policy and any certificate used in this state in accordance with the filing requirements and procedures applicable to group medicare supplement policies issued in this state.

History: Effective October 1, 1989.

General Authority: NDCC 26.1-36-38, 28-32-02

Law Implemented: NDCC 26.1-36-31, 26.1-36-32, 26.1-36-33, 26.1-36-34, 26.1-36-35, 26.1-36-36

45-06-01-08.2. Prohibited compensation for replacement with the same company. No entity may provide compensation to its agents or other producers which is greater than the renewal compensation which would have been paid on an existing policy if the existing policy is replaced by another policy with the same company where the new policy benefits are substantially similar to the benefits under the old policy and the old policy was issued by the same insurer or insurer group.

History: Effective October 1, 1989.

General Authority: NDCC ~~26.1-36-38~~, 28-32-02

Law Implemented: NDCC ~~26.1-36-31~~, ~~26.1-36-32~~, 26.1-36-33, 26.1-36-34,
~~26.1-36-35~~, ~~26.1-36-36~~

45-06-01-08.3. Filing requirements for advertising. Every insurer, health care service plan, or other entity providing medicare supplement insurance or benefits in this state shall provide upon request a copy of any medicare supplement advertisement intended for use in this state whether through written, radio, or television medium to the commissioner of insurance of this state for review or approval by the commissioner. Filing of advertisements is not required except upon specific written request of the commissioner.

History: Effective October 1, 1989.

General Authority: NDCC ~~26.1-36-38~~, 28-32-02

Law Implemented: NDCC ~~26.1-36-31~~, ~~26.1-36-32~~, 26.1-36-33, 26.1-36-34,
~~26.1-36-35~~, ~~26.1-36-36~~

45-06-05-04. Policy practices and provisions.

1. Renewability. The terms "guaranteed renewable" and "noncancelable" may not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of section 45-06-04-05.
 - a. No such policy issued to an individual may contain renewal provisions less favorable to the insured than "guaranteed renewable". However, the commissioner may authorize nonrenewal on a statewide basis, on terms and conditions deemed necessary by the commissioner, to best protect the interests of the insureds, if the insurer demonstrates:
 - (1) That renewal will jeopardize the insurer's solvency;
or
 - (2) That:
 - (a) The actual paid claims and expenses have substantially exceeded the premium and investment income associated with the policies;
 - (b) The policies will continue to experience substantial and unexpected losses over their lifetime;
 - (c) The projected loss experience of the policies cannot be significantly improved or mitigated through reasonable rate adjustments or other reasonable methods; and

- (d) The insurer has made repeated and good faith attempts to stabilize loss experience of the policies, including the timely filing for rate adjustments.
 - b. The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.
 - c. The term "noncancelable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.
2. **Limitations and exclusions.** No policy may be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:
- a. Preexisting conditions or diseases;
 - b. Mental or nervous disorders; however, this does not permit exclusion or limitation of benefits on the basis of alzheimer's disease;
 - c. Alcoholism and drug addiction;
 - d. Illness, treatment, or medical condition arising out of:
 - (1) War or act of war (whether declared or undeclared);
 - (2) Participation in a felony, riot, or insurrection;
 - (3) Service in the armed forces or units auxiliary thereto;
 - (4) Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or
 - (5) Aviation (this exclusion applies only to nonfare paying passenger).
 - e. Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under medicare or other governmental program

(except medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

- f. This subsection is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.
3. Extension of benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.
4. Continuation or conversion. ~~An insurer or similar organization issuing a group long-term care insurance policy shall provide a basis for continuation or conversion of coverage.~~
- a. Group long-term care insurance issued in this state on or after October 1, 1989, shall provide covered individuals with a basis for continuation or conversion of coverage.
- b. For the purposes of this section, "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Continuation provisions of group policies which restrict provision of benefits and services to, or contain incentives to use, certain providers or facilities (because coverage is provided to or by a managed care plan such as a continuing care retirement community or a health maintenance organization), may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed and nonmanaged plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.
- c. For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual

whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insurance class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

- d. For the purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts the provision of benefits and services to, or contains incentives to use, certain providers or facilities (because coverage is provided to or by a managed care plan such as a continuing care retirement community or a health maintenance organization), the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed and nonmanaged plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.
- e. Written application for the converted policy must be made and the first premium due, if any, must be paid as directed by the insurer not later than thirty-one days after termination of coverage under the group policy. The converted policy must be issued effective on the day following the termination of coverage under the group policy, and must be renewable annually.
- f. Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy must be calculated on the basis of the insured's age at inception of coverage under the group policy from which the conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy must be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.
- g. Continuation of coverage or issuance of a converted policy shall be mandatory, except where:
- (1) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(2) The terminating coverage is replaced not later than thirty-one days after termination by group coverage effective on the day following the termination of coverage:

(a) Providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(b) The premium for which is calculated in a manner consistent with the requirements of subdivision f.

h. Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than one hundred percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

i. The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

j. Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

History: Effective July 1, 1988; amended effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-45

45-06-05-05. Required disclosure provisions.

1. **Renewability.** Individual long-term care insurance policies must contain a renewability provision. Such provision must be appropriately captioned, must appear on the first page of the

policy, and must clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

2. **Riders and endorsements.** Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy must require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge must be set forth in the policy, rider, or endorsement.
3. **Payment of benefits.** A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", or words of similar import must include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.
4. **Limitations.** If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy or certificate and be labeled as "preexisting condition limitations".
5. **Other limitations or conditions on eligibility for benefits.** Effective July 1, 1990, a long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in subsection 2 of North Dakota Century Code section 26.1-45-07 must set forth a description of such limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and must label such paragraph "limitations or conditions on eligibility for benefits."

History: Effective July 1, 1988; amended effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-45

45-06-05-10. Standard format outline of coverage. This section implements, interprets, and makes specific the provisions of subsection 2 of North Dakota Century Code section 26.1-45-09 in prescribing a standard format and the content of an outline of coverage.

1. The outline of coverage must be a freestanding document, using no smaller than ten point type.
2. The outline of coverage must contain no material of an advertising nature.
3. Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence equivalent to such capitalization or underscoring.
4. Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.
5. Format for outline of coverage:

[COMPANY NAME]
[ADDRESS - CITY AND STATE]
[TELEPHONE NUMBER]
LONG-TERM CARE INSURANCE
OUTLINE OF COVERAGE

[Policy number or group master policy and certificate number]

1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).
2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!
3. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.
 - a. [Provide a brief description of the right to return - "free look" provision of the policy.]
 - b. [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate.

If the policy contains such provisions, include a description of them.]

4. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for medicare, review the Medicare Supplement Buyer's Guide from the insurance company.

a. [For agents] Neither [insert company name] nor its agents represent medicare, the federal government or any state government.

b. [For direct response] [insert company name] is not representing medicare, the federal government, or any state government.

5. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

6. BENEFITS PROVIDED BY THIS POLICY.

a. [Covered services, related deductibles, waiting periods, elimination periods and benefit maximums.]

b. [Institutional benefits, by skill level.]

c. [Noninstitutional benefits, by skill level.]

[Any benefit screens must be explained in this section. If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens must be explained.]

7. LIMITATIONS AND EXCLUSIONS.

[Describe:

- a. Preexisting conditions.
- b. Noneligible facilities and provider.
- c. Noneligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.).
- d. Exclusions and exceptions.
- e. Limitations.]

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in (6) above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

8. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- a. That the benefit level will not increase over time.
- b. Any automatic benefit adjustment provisions.
- c. Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage.
- d. If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations.
- e. And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

9. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

- [a. Describe the policy renewability provisions;
- b. For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy.

c. Describe waiver of premium provisions or state that there are not such provisions.

d. State whether or not the company has a right to change premium, and if such a right exists, describe clearly and concisely each circumstance under which premium may change.]

10. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having alzheimer's disease or related degenerative and dementing illnesses. Specifically, describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

11. PREMIUM.

a. [State the total annual premium for the policy.

b. If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

12. ADDITIONAL FEATURES.

a. [Indicate if medical underwriting is used;

b. Describe other important features.]

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-45

TITLE 48
Board of Animal Health

OCTOBER 1989

48-08-01-06. License revocation. The state veterinarian is authorized to revoke any license of a monitored quarantined feedlot if the owner fails to cooperate or violates this chapter.

History: Amended effective October 1, 1989.

General Authority: NDCC 36-01-29

Law Implemented: NDCC 36-01-29

NOVEMBER 1989

48-02-01-10. All other animals. Importation of all animals not included in the preceding sections, including domesticated wild animals, game animals, game birds and eggs of game birds, shall be accompanied by a permit issued by the North Dakota game and fish department or the board of animal health, unless the purpose of importation is for bona fide scientific or educational purposes. The state veterinarian may require any such animals and birds to test negative for any disease prior to importation for the detection of any disease, tests and inspections upon any such animals and birds and eggs prior to importation and may deny importation if the results of such tests or inspections are other than negative.

History: Amended effective September 1, 1988; November 1, 1989.

General Authority: NDCC 36-21.1-12

Law Implemented: NDCC 36-21.1-12

STAFF COMMENT: Chapter 48-04-03 contains all new material but is not underscored so as to improve readability.

CHAPTER 48-04-03
INFECTIOUS FOOTROT OF SHEEP

Section

48-04-03-01	Definitions
48-04-03-02	Quarantined Feedlot Requirements
48-04-03-03	License Revocation

48-04-03-01. Definitions.

1. "Infectious footrot of sheep" means that infectious process caused by the bacteria fusobacterium necrophorum and bacteroides nodosus.
2. "Sheep" means female and male sheep (including neutered) of all ages.
3. "Quarantined feedlot" means that dry lot facility used for the maintaining or feeding of sheep, including those that are of unknown origin or that originate from a quarantined flock.

History: Effective August 31, 1989.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-04-03-02. Quarantined feedlot requirements.

1. A written application to operate a quarantined feedlot must be made to the North Dakota board of animal health, along with the first year license fee of fifty dollars.
2. An agent of the board must make an inspection of the facility to determine eligibility for licensure.
3. If a license is granted, licenses are granted on a yearly basis and an annual license fee of fifty dollars is due prior to license expiration date.
4. Imported sheep going into the quarantined feedlot must meet the same requirements as all sheep imported for other purposes, with the exception of the footrot inspection requirement.
5. All sheep sold out of the quarantined feedlot must go directly to slaughter or to another quarantined feedlot and all must be sold under permit only.
6. Death losses and signs of infectious footrot must be reported to the board on a monthly basis. Verification of death losses may be required.
7. Dry lot feeding only is permitted. No grazing is allowed.
8. The quarantined feedlot must be at least one-half mile [0.80 kilometers] from other location where sheep or goats are maintained, unless that location is another quarantined feedlot.
9. The quarantined feedlot must be of such construction that the possibility of sheep escaping from the premises is unlikely.

History: Effective August 31, 1989.

General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

48-04-03-03. License revocation. The state veterinarian is authorized to revoke any license of a quarantined sheep feedlot if the owner fails to cooperate or violates this chapter. Any licensee whose license has been revoked must appear before the board offering reasons why the license should be reinstated before any license can be considered for reinstatement.

History: Effective August 31, 1989.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

48-09-01-01. Feedlot registration. For the purpose of complying with North Dakota Century Code section 36-01-30 regulating brand inspection of registered feedlots:

1. Any person who operates a dry lot cattlefeeding operation within the confines of permanently fenced lots may make application to the chief brand inspector of the North Dakota stockmen's association for a registered feedlot number. After the association has received application and a fee, an agent of the association shall, within thirty days, make investigation to determine that the following requirements are satisfied:
 - a. Operator's lots must be of permanently fenced dry lot status.
 - b. Operator must commonly practice feeding cattle to finish for slaughter.
 - c. Commercial feedlots, which custom feed cattle for other persons, and do not have ownership of the cattle, are not eligible for registration.

However, producers wishing to have their cattle fed at a commercial lot may apply for a registered feedlot permit individually and the operators of a commercial lot will be responsible for submitting all the necessary paperwork. If satisfactory the association may issue such registration number valid for ten years unless rescinded for cause.

2. All cattle placed in a registered feedlot shall be accompanied by a brand inspection certificate. Such certificate may be a market clearance, a local brand inspection certificate, or a recognized brand inspection certificate from another state. Cattle purchased or acquired by a registered feedlot operator from a North Dakota producer shall be inspected before being mixed with other cattle and the producer shall pay inspection

costs. Cattle raised by a registered feedlot operator and placed in the operator's own feedlot shall be inspected at the time they are placed in the feedlot and the regular inspection fee shall be paid by the operator. Cattle to be placed in a registered feedlot which come from outside North Dakota, but which are not accompanied by a brand inspection certificate, shall be inspected without charge before being mixed with other cattle.

3. The operator of a registered feedlot shall be required to keep certain cattle inventory records. A form for this purpose shall be prescribed by the chief brand inspector, such form to show number of cattle in the lot, number sold, date and place where cattle were sold, number of cattle remaining in lot, number of replacement cattle placed in lot, and such other information as may be necessary, including death losses. Cattle shipped from a registered feedlot directly to market shall not be subject to brand inspection or payment of inspection fees at the market but must be shipped on a permit form as prescribed by the chief brand inspector. This form shall be made in triplicate; one copy shall be delivered to the brand inspector at the market along with shipment; one copy shall be sent to the chief brand inspector along with the fees not later than December thirty first ten days after the end of each quarter (quarters being March, June, September, December) for those cattle shipped during the last calendar year previous three months; and one copy shall be retained by the operator. In the event the above permit form fails to accompany shipment of cattle to market, cattle shall be subject to inspection and regular fees shall be charged for the service. The operator of a registered feedlot shall pay an annual assessment of twenty dollars plus three cents per head on each head shipped on the above permit form. Operators will be billed the twenty dollar portion of the annual assessment by the chief brand inspector on or about December thirty first of each year, on cattle shipped during the preceding calendar year in December for the coming year's annual assessment.
4. Cattle sold from a registered feedlot, but which are not sold for slaughter, must be inspected and the seller shall bear the cost of inspection at the regular fee.
5. Registered feedlots shall be subject to inspection at any reasonable time at the discretion of the chief brand inspector, and the operator shall show cattle inventory records and inspection certificates to cover all cattle in the operator's feedlot.
6. The chief brand inspector is authorized to revoke or suspend registration.

History: Amended effective June 1, 1983; November 1, 1989.

General Authority: NDCC 36-01-30
Law Implemented: NDCC 36-01-30

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TITLE 50
Medical Examiners, Board of

AUGUST 1989

STAFF COMMENT: Section 50-03-01-14 contains all new material but is not underscored so as to improve readability.

50-03-01-14. Registration renewal requirements. Every second year after the initial registration of a physician's assistant, the assistant's registration renewal application must be accompanied with evidence of the successful completion of one hundred hours of continued education for physician's assistants. Every sixth year, the applicant must demonstrate that the applicant has successfully passed reexamination by the national commission on certification of physicians' assistants or other certifying reexamination approved by the board.

History: Effective August 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17-02(10)

TITLE 51
Milk Stabilization Board

AUGUST 1989

51-03-02-15. Formula to determine changes in the class I wholesale and retail prices. Based upon the class I formula as ordered in section 51-03-02-06, for each hundredweight price change to dairy farmers for raw milk of fifteen cents per hundredweight increase or decrease above the thirteen dollars and fifty-one cents hundredweight level, or twenty-three cents per hundredweight price increase or decrease below the thirteen dollars and fifty-one cents hundredweight level, there will be a respective automatic price increase or decrease of one cent per half gallon at the retail and wholesale levels. Respective price changes will take effect the first Monday of the month in which they occur. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization plan.

History: Amended effective November 1, 1983; June 26, 1989.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-03-16. Formula to determine changes in the class I wholesale and retail prices. Based upon the class I formula as ordered in section 51-03-03-06, for each hundredweight price change to dairy farmers for raw milk of fifteen cents per hundredweight increase or decrease above the thirteen dollars and fifty-one cents hundredweight level, or twenty-three cents per hundredweight price increase or decrease below the thirteen dollars and fifty-one cents hundredweight level there will be a respective automatic price increase or decrease of one cent per half gallon at the retail and wholesale levels. Respective price changes will take effect the first Monday of the month in which they occur. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization plan.

History: Amended effective November 1, 1983; June 26, 1989.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)
Law Implemented: NDCC 4-18.1-07

51-03-04-16. Formula to determine changes in the class I wholesale and retail prices. Based upon the class I formula as ordered in section 51-03-04-06, for each hundredweight price change to dairy farmers for raw milk of fifteen cents per hundredweight increase or decrease above the thirteen dollars and fifty-one cents hundredweight level, or twenty-three cents per hundredweight price increase or decrease below the thirteen dollars and fifty-one cents hundredweight level, there will be a respective automatic price increase or decrease of one cent per half gallon at the retail and wholesale levels. Respective price changes will take effect the first Monday of the month in which they occur. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization plan.

History: Amended effective November 1, 1983; June 26, 1989.
General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)
Law Implemented: NDCC 4-18.1-07

TITLE 54
Nursing, Board of

OCTOBER 1989

54-02-01-05. Examination results. Examination results will be reported by mail to individual candidates and recorded on the candidate's permanent record in the board office. The examination results for the successful candidate who has completed the nursing education program will include the number of the certificate of registration permanent license that shall be issued to the candidate and a notice that these results constitute permission to continue in the practice of nursing until the certificate of registration and a permanent license have has been issued. Candidates who have not completed the nursing education program will receive the examination results but will not be authorized to practice until all requirements have been met and the permanent license has been issued.

History: Amended effective November 1, 1979; October 1, 1989.

General Authority: NDCC 43-12.1-08(18)

Law Implemented: NDCC 43-12.1-10

54-02-01-08. Employment verification. For all candidates not residing in North Dakota, a verification of employment form issued by the board must be signed by the North Dakota employer or potential employer before a current license authorization to practice is issued.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-12.1-08(18)

Law Implemented: NDCC 43-12.1-11

54-02-01-11. Qualifications for admission to the licensing examination. An "appropriate nursing education program" is a practical nursing education program or registered nursing education program which meets or exceeds requirements as set forth in article 54-03 or 54-03.1 and has been approved by the board Repealed effective October 1, 1989.

History: ~~Effective March 1, 1986.~~
General Authority: ~~NDCC 43-12.1-08~~
Law Implemented: ~~NDCC 43-12.1-10~~

54-02-01-12. Early admission to the licensing examination. Students enrolled in nursing programs approved by the board of nursing may apply for early admission to the licensing examination if the examination is scheduled within the final academic term of the nursing program and authorization from the nursing program for early admission to the licensing examination is included with the application. Candidates admitted to the licensing examination prior to the completion of the nursing program must meet all requirements for licensure by examination before a license to practice is issued.

History: Effective October 1, 1989.
General Authority: NDCC 43-12.1-08(18)
Law Implemented: NDCC 43-12.1-10

54-02-01-13. Authorization to practice nursing. Authorization to practice nursing between the dates of graduation and notification of results of the licensing examination will be issued to individuals accepted as candidates for the first licensing examination after program completion for which the candidate is eligible.

History: Effective October 1, 1989.
General Authority: NDCC 43-12.1-08(18)
Law Implemented: NDCC 43-12.1-10

54-02-07-02. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:

1. "Denial" means the board's refusal to issue a current license upon application.
2. "Probation" means issuance of a current license marked "encumbered", and identification of specific requirements.
3. "Reprimand" means written communication to the licensee stating the board's concerns, and public notification of the licensee's name, address, and reason for the reprimand.
4. "Revocation" means the withdrawal by the board of the license to practice nursing for a specified length of time of no less than one year.
5. "Suspension" means the withholding by the board of the license to practice nursing for a specified length of time.
6. "Unprofessional conduct" includes, but is not limited to:

- a. Failure to provide nursing care because of diagnosis, age, sex, race, religion, creed, or color.
 - b. Abusing a patient verbally, physically, emotionally, or sexually.
 - c. Failure to supervise persons to whom nursing functions have been delegated or assigning unqualified persons to perform functions of licensed nurses.
 - d. The practice of nursing without sufficient knowledge, skills, or nursing judgment.
 - e. Inaccurate or incomplete documentation or recording, or the falsification, alteration, or destruction of patient, employee, or employer records.
 - f. Aiding or abetting another person in performing an act prohibited by law or rule, or failure to perform an act required by law, rule, or standard of professional care.
 - g. Diverting supplies, equipment, or drugs for personal use or unauthorized use.
 - h. Misuse or betrayal of a trust or confidence.
 - i. Deliberate exploitation of a patient or family, or both, for financial or personal gain.
7. ~~"Willfully" includes, but is not limited to:~~
- ~~a. Continued action after notice from the board that such action is not warranted or authorized.~~
 - ~~b. Disregard of the expiration date of a license to practice nursing.~~
 - ~~c. Providing false or incorrect information to an employer regarding the status of a license to practice nursing.~~
 - ~~d. Lack of diligence in which a licensee understood an obligation, had an ability to comply and failed to comply.~~

History: Effective August 1, 1988; amended effective October 1, 1989.
 General Authority: NDCC 43-12.1-08(14)
 Law Implemented: NDCC 43-12.1-14

54-02-08-01. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:

1. "Temporary practical nurse license" means the license issued to an individual who meets all of the requirements for licensure by endorsement as a licensed practical nurse except the educational requirements in North Dakota Century Code section 43-12.1-12.
2. "Temporary registered nurse license" means the license issued to an individual who meets all of the requirements for licensure as a registered nurse except the education requirements in North Dakota Century Code section 43-12.1-12.

History: Effective October 1, 1989.

General Authority: NDCC 43-12.1-08(18)

Law Implemented: NDCC 43-12.1-08(19)

54-02-08-02. Eligibility. Applicants for a temporary practical nurse license or a temporary registered nurse license must submit a completed notarized application and pay the endorsement fee of sixty-five dollars for registered nurses or forty dollars for licensed practical nurses. The application will include notice of intent to complete the educational requirements for license by endorsement.

History: Effective October 1, 1989.

General Authority: NDCC 43-12.1-08(18)

Law Implemented: NDCC 43-12.1-08(19)

54-02-08-03. Renewal.

1. A temporary practical nurse license may be renewed for two consecutive calendar years if the licensee meets the following requirements:
 - a. Complete the relicensure application.
 - b. Pay the current renewal fee.
 - c. Provide the board with proof of enrollment and coursework in a board-approved nursing education program.
2. A temporary registered nurse license may be renewed for four consecutive calendar years if the licensee meets the following requirements:
 - a. Complete the relicensure application.
 - b. Pay the current renewal fee.
 - c. Provide the board with proof of enrollment and coursework in a board-approved nursing education program.

3. Nonrenewal of a temporary license because of failure to complete the educational requirements in the allotted time or failure of the applicant to apply for renewal shall be communicated to all health care agencies in North Dakota.

History: Effective October 1, 1989.

General Authority: NDCC 43-12.1-08(18)

Law Implemented: NDCC 43-12.1-08(19)

54-04.1-02-01. Qualifications. To qualify for a nursing scholarship or loan, the applicant must:

1. Be a United States citizen and a North Dakota resident.
2. Demonstrate financial need, ~~which will be determined solely by the board.~~
3. Have been accepted into a board-approved nursing education program or be enrolled in a board-approved nursing education program for practical nurses or registered nurses.
4. Have been accepted into or be enrolled in an educational program for graduate nurses that is acceptable to the board.
5. ~~Have all necessary application forms completed and on file in the board office by March first of the year in which they wish to be considered for practical nurse or registered nurse student scholarship loans.~~
6. Have all necessary application forms completed and on file in the board office by July first of the year in which they wish to be considered for a graduate nurse scholarship loan. Application for nurse refresher course scholarship loans will be considered at any board meeting.

History: Effective October 1, 1987; amended effective October 1, 1989.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-03-01. Amount of awards. To the extent funds are available, scholarship loan awards will be made in the following amounts:

1. Practical nurse students may receive an award of no more than one thousand dollars for each year of the nursing program.
2. Licensed practical nurse students who plan to complete studies for an associate degree in nursing may receive an award of no more than one thousand dollars.

3. Registered nurse students and graduate nurse students who plan to complete studies for a baccalaureate degree in nursing may receive an award of no more than one thousand dollars a year for the last three years of the nursing program.
4. Graduate nurse students may receive an award of no more than five thousand dollars to complete studies for a master's degree in nursing or a doctorate.
5. Licensed practical nurses or registered nurses may receive an award of no more than one thousand dollars for study in a nursing specialty program or a nurse refresher course.

History: Effective October 1, 1987; amended effective October 1, 1989.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-05-03-01. Statement of intent. Registered nurse roles are changing due to the impetus of a growing body of nursing knowledge, increasing nurse-physician collaboration and new consumer expectations for health care. The citizens of North Dakota have the need and the right to know the meaning of the titles assigned to these roles as well as the assurance that the users of these titles have met specific criteria as defined by rules ~~and regulations~~ of the board of nursing. These titles are nurse clinician, nurse practitioner, ~~and~~ clinical nurse specialist, certified nurse midwife, and certified registered nurse anesthetist. Rationale for establishing these titles is based upon the nurse's advanced academic preparation, system of practice, and focus of specialization. ~~The title and practice of the certified registered nurse anesthetist (CRNA) are acknowledged by the board of nursing.~~ Registered nurses who practice beyond the scope of chapter 54-05-02 shall conform to rules ~~and regulations~~ governing registered nurse practice in expanded roles in North Dakota.

The scope of practice for expanded roles is based upon the common understanding by nurses, physicians, other health care providers, and the consumer that an appropriately educated nurse can competently deliver a broad range of services to people. The nurse's performance of any authorized or delegated medical function is also the responsibility of the physician and is to be performed with the physician's review. The nurse is solely responsible for the nurse's performance of nursing and is ultimately accountable to the client/patient within the Nurse Practices Act.

History: Effective October 1, 1980; amended effective October 1, 1989.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(18)

54-05-03-12. Certified registered nurse anesthetist. Registered nurse anesthetists who meet the requirements for advanced licensure and hold the appropriate advanced license may use the title "certified

registered nurse anesthetist" and the abbreviation "C.R.N.A." in lieu of the designated assigned title for the specific advanced license.

History: Effective October 1, 1989.

General Authority: NDCC 43-12.1-08(18)

Law Implemented: NDCC 43-12.1-08(16)

TITLE 62
Plumbing, Board of

OCTOBER 1989

62-02-02-01. Application for water conditioning installer or contractor license. No applicant shall be entitled to take the examination for either the water conditioning contractor or water conditioning installer's certificate and license unless and until the applicant furnishes to the board satisfactory evidence that the applicant possesses sufficient practical experience to enable the applicant to perform satisfactorily the duties of the classification for which the applicant has made application.

1. Applicants for a water conditioning installer's examination and license shall have had one year's experience as an apprentice water conditioning installer under a licensed water conditioning contractor. A one-year term of apprenticeship is defined as not less than one thousand nine hundred hours.
2. Applicants who are water conditioning installers in other states who desire to work in this state in localities where a state water conditioning installer's license is required may make application for a water conditioning installer's examination and license. Proof of such water conditioning installer's license from another state shall be vouched for as provided on the application blank furnished by the plumbing board.
3. Graduates of the plumbing course of an accredited trade school having at least a nine-month (one thousand twenty hours) course in plumbing shall be eligible to make application for a water conditioning installer's examination and license.
4. All applicants for a water conditioning contractor's license must be twenty-one years of age and must have had ~~two year's~~ ~~(three thousand four hundred hours)~~ one year's (one thousand nine hundred hours) experience as a water conditioning installer licensed by the state of North Dakota or any other

state that has a state licensing law. Proof of such water conditioning installer's license from another state shall be vouched for as provided on the application blank furnished by the plumbing board.

5. Applicants who are water conditioning contractors in other states who desire to work in this state in localities where a state water conditioning contractor's license is required may make application for a water conditioning contractor's examination and license. Proof of such water conditioning contractor's license from another state shall be vouched for as provided on the application blank furnished by the plumbing board.
6. All applications will expire and be canceled after a period of six months from date of approval if the applicant fails to appear for examination within the six-month period.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18.1-03

Law Implemented: NDCC 43-18.1-04

62-03-01-01. Definitions. For the purpose of this article, the following terms shall have the meaning indicated in this section. No attempt is made to define ordinary words which are used in accordance with their established dictionary meaning except where it is necessary to define their meaning as used in this article to avoid misunderstanding.

1. "A.B.S." means acrylonitrile-butadiene-styrene.
2. "Accessible" means having access thereto but which first may require the removal of an access panel, door, or similar obstruction. "Readily accessible" means direct access without the necessity of removing or moving any panel, door, or similar obstruction.
3. "Acid waste" means corrosive waste.
4. "Administrative authority" means the individual official, board, department, or agency established and authorized by a state, county, city, or other political subdivision created by law to administer and enforce the provisions of the plumbing code as adopted or amended.
5. "A.G.A." means American gas association.
6. "Air break (drainage system)" means a piping arrangement in which a drain from a fixture, appliance, or device discharges indirectly into a fixture, receptacle, or interceptor at a point below the flood level rim of the receptacle so installed as to prevent backflow or siphonage.

7. "Air chamber" means a pressure surge absorbing device operating through the compressibility of air.
8. "Airgap (drainage systems)" means the unobstructed vertical distance through the free atmosphere between the outlet of waste pipe and the flood level rim of the receptacle into which it is discharging.
9. "Airgap (water distribution system)" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level rim of the receptacle.
- 9.1. "Alkali waste" means waste having a pH factor more than seven.
10. "Anchors" means supports.
11. "A.N.S.I." means the American national standards institute.
12. "Antiscald valve" means a valve that is designed to control water temperature to reduce the risk of scalding - see "water temperature control valve".
13. "Approved" means accepted or acceptable under an applicable standard stated or cited in this article, or accepted as suitable for the proposed use under procedures and powers of the administrative authority.
14. "Area drain" means a receptacle designed to collect surface or storm water from an open area.
15. "A.S.M.E." means the American society of mechanical engineers.
16. "Aspirator" means a fitting or device supplied with water or other fluid under positive pressure which passes through an integral orifice or "constriction" causing a vacuum.
17. "Autopsy table" means a fixture or table used for the postmortem examination of a body.
18. "B and S" means Brown and Sharpe.
19. "Backflow" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source. Backsiphonage is one type of backflow.
20. "Backflow connection" means any arrangement whereby backflow can occur.
21. "Backflow drainage" means a reversal of flow in the drainage system.

22. "Backflow preventer" means a device or means to prevent backflow.
23. "Backflow preventer, reduced pressure zone type" means an assembly of differential valves and check valves including an automatically opened spillage port to the atmosphere.
24. "Backflow, water distribution" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source. Backsiphonage is one type of backflow.
25. "Back pressure backflow" means a condition, which may occur in the potable water distribution system, whereby a higher pressure than the supply pressure is created which causes a reversal of flow into the potable water piping.
26. "Backsiphonage" means the flowing back of used, contaminated, or polluted water from a plumbing fixture or vessel or other sources into a potable water supply pipe due to a negative pressure in the pipe.
27. "Back vent" means individual vent.
28. "Backwater valve" means a device installed in a drain or pipe to prevent backflow.
29. "Bathroom group" means, unless specifically cited in the body of the code, a water closet, a lavatory, and a bathtub or shower stall or both.
30. "Battery of fixtures" means any group of two or more similar adjacent fixtures which discharge into a common horizontal waste or soil branch.
31. "Bedpan steamer" means a fixture used for scalding bedpans or urinals by direct application of steam.
32. "Bedpan washer" means a fixture designed to wash bedpans and to flush the contents into the soil drainage system. It may also provide for steaming the utensils with steam or hot water.
33. "Bedpan washer hose" means a device supplied with hot and cold water and located adjacent to a water closet or clinic sink to be used for cleansing bedpans.
34. "Boiler blowoff" means an outlet on a boiler to permit emptying or discharge of sediment.
35. "Boiler blowoff tank" means a vessel designed to receive the discharge from a boiler blowoff outlet and to cool the

discharge to a temperature which permits its safe discharge to the drainage system.

36. "Branch" means any part of the piping system other than a riser, main, or stack.
37. "Branch, fixture" means fixture branch.
38. "Branch, horizontal" means horizontal branch.
39. "Branch interval" means a distance along a soil or waste stack corresponding in general to a story height, but in no case less than eight feet [2.44 meters], within which the horizontal branches from one floor or story of a building are connected to the stack.
40. "Branch vent" means a vent connecting one or more individual vents with a vent stack or stack vent.
41. "Building" means a structure having walls and a roof designed and used for the housing, shelter, enclosure, or support of persons, animals, or property.
42. "Building classification" means the arrangement adopted by the administrative authority for the designation of buildings in classes according to occupancy.
43. "Building drain" means that part of the lowest piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning three feet [91.44 centimeters] outside the building wall.
44. "Building drain - combined" means a building drain which conveys both sewage and storm water or other drainage.
45. "Building drain - sanitary" means a building drain which conveys sewage only.
46. "Building drain - storm" means a building drain which conveys storm water or other drainage but no sewage.
47. "Building sewer" means that part of the drainage system which extends from the end of the building drain and conveys its discharge to a public sewer, private sewer, individual sewage-disposal system, or other point of disposal.
48. "Building sewer - combined" means a building sewer which conveys both sewage and storm water or other drainage.
49. "Building sewer - sanitary" means a building sewer which conveys sewage only.

50. "Building sewer - storm" means a building sewer which conveys storm water or other drainage but no sewage.
51. "Building subdrain" means that portion of a drainage system which does not drain by gravity into the building sewer.
52. "Building trap" means a device, fitting, or assembly of fittings installed in the building drain to prevent circulation of air between the drainage system of the building and the building sewer.
53. "Cesspool" means a lined and covered excavation in the ground which receives the discharge of domestic sewage or other organic waste from a drainage system, so designed as to retain the organic matter and solids, but permitting the liquids to seep through the bottom and sides.
54. "Chemical waste" means special wastes such as, but not limited to, corrosive wastes or industrial wastes containing chemicals.
55. "Circuit vent" means a branch vent that serves two or more traps and extends from the downstream side of the highest fixture connection of a horizontal branch to the vent stack.
56. "Clear water waste" means cooling water and condensate drainage from refrigeration, and air-conditioning equipment; cooled condensate from steam heating systems; cooled boiler blowdown water; wastewater drainage from equipment rooms and other areas where water is used without an appreciable addition of oil, gasoline, solvent, acid, etc., and treated effluent in which impurities have been reduced below a minimum concentration considered harmful.
57. "Clinic sink (bedpan hopper)" means a sink designed primarily to receive wastes from bedpans provided with a flush rim, integral trap with a visible trap seal, having the same flushing and cleansing characteristics as a water closet.
58. "Code" means this article, subsequent amendments thereto, or any emergency rule or regulation which the administrative authority having jurisdiction may lawfully adopt.
59. "Combination fixture" means a fixture combining one sink and laundry tray or a two- or three-compartment sink or laundry tray in one unit.
60. "Combination waste and vent system" means a specially designed system of waste piping embodying the horizontal wet venting of one or more sinks or floor drains by means of a common waste and vent pipe adequately sized to provide free movement of air above the flow line of the drain.

61. "Combined building drain" means building drain - combined.
62. "Combined building sewer" means building sewer - combined.
63. "Commercial" means public or public use.
64. "Common vent" means a vent connected at a common connection of two fixture drains and serving as a vent for both fixtures.
65. "Conductor" means the water conductor from the roof to the building storm drain, combined building sewer, or other means of disposal and located inside of the building.
66. "Continuous vent" means a vertical vent that is a continuation of the drain to which it connects.
67. "Continuous waste" means a drain from two or more fixtures connected to a single trap.
68. "Corrosive waste" means waste derived from laboratories or classrooms used for laboratory or demonstration purposes, or from industrial or commercial processes, or from any sink or fixture made to receive discarded chemicals, whereby acid or other harmful chemicals are disposed of, which may destroy or cause damage to the materials and equipment of a plumbing installation, if such materials and equipment are not of a type selected, manufactured, or installed for such special use.
69. "Critical level" on a backflow prevention device or vacuum breaker means a point established by the manufacturer and usually stamped on the device by the manufacturer which determines the minimum elevation above the flood level rim of the fixture or receptacle served at which the device may be installed. When a backflow prevention device does not bear a critical level marking, the bottom of the vacuum breaker, combination valve, or the bottom of any approved device shall constitute the critical level.
70. "Cross-connection" means any connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems. (See backflow and backsiphonage.)
71. "Dead end" means a branch leading from a soil, waste, or vent pipe, building drain, or building sewer, and terminating at a developed length of two feet [60.96 centimeters] or more by means of a plug, cap, or other closed fitting.

72. "Department having jurisdiction" means administrative authority.
73. "Developed length" means the length of a pipeline measured along the centerline of the pipe and fittings.
74. "Diameter" means the nominal diameter as designated commercially.
75. "Double check valve assembly" means a backflow prevention device consisting of two independently acting check valves, internally force loaded to a normally closed position between two tightly closing shutoff valves, and with means of testing for tightness.
76. "Double offset" means two changes of direction installed in succession or series in a continuous pipe.
77. "Downspout" means the rainleader from the roof to the building storm drain, combined building sewer, or other means of disposal and located outside of the building.
78. "Domestic sewage" means the water-borne wastes derived from ordinary living processes.
79. "Drain" means any pipe which carries wastewater or water-borne wastes in a building drainage system.
80. "Drainage pipe" means drainage system.
81. "Drainage system" means all the piping, within public or private premises, which conveys sewage, rainwater, or other liquid wastes to a point of disposal. It does not include the mains of a public sewer system or private or public sewage-treatment or disposal plant.
82. "Drainage system, building gravity" means a drainage system which drains by gravity into the building sewer.
83. "Drainage system, sub-building" means building subdrain.
84. "Dry well" means leaching well.
85. "Dual vent" means common vent.
86. "Durham system" means a soil, waste, or vent pipe system where all piping is of threaded pipe using recessed drainage fittings.
87. "Dwelling unit - multiple" means a room or group of rooms forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating; and whose sewer connections and water supply within

its own premise are shared with one or more other dwelling units.

88. "Dwelling unit - single" means a room or group of rooms forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating; and whose sewer connections and water supply are within its own premise separate from and completely independent of any other dwelling.
89. "D.W.V." means drainage, waste, and venting.
90. "Effective opening" means the minimum cross-sectional area at the point of water supply discharge, measured or expressed in terms of (a) diameter of a circle, or (b) if the opening is not circular, the diameter of a circle of equivalent cross-sectional area.
91. "Existing work" means a plumbing system or any part thereof installed prior to the effective date of this article.
92. "Family" means one or more individuals living together and sharing the same facilities.
93. "Fixture" means plumbing fixture.
94. "Fixture branch" means a water supply pipe between the fixture supply and water distributing pipe.
95. "Fixture branch - drainage" means a drain serving one or more fixtures which discharges into another drain.
96. "Fixture drain" means the drain from the trap of a fixture to the junction of that drain with any other drainpipe.
97. "Fixture supply" means the water supply pipe connecting a fixture to a branch water supply pipe or directly to a main water supply pipe.
98. "Fixture unit (drainage - d.f.u.)" means a measure of the probable discharge into the drainage system by various types of plumbing fixtures. The drainage fixture-unit value for a particular fixture depends on its volume rate of drainage discharge, on the time duration of a single drainage operation, and on the average time between successive operations.
99. "Fixture unit (supply - s.f.u.)" means a measure of the probable hydraulic demand on the water supply by various types of plumbing fixtures. The supply fixture-unit value for a particular fixture depends on its volume rate of supply, on the time duration of a single supply operation, and on the average time between successive operations.

100. "Flood level" means flood level rim.
101. "Flood level rim" means the edge of the receptacle from which water overflows.
102. "Flooded" means the condition which results when the liquid in a container or receptacle rises to the flood-level rim.
103. "Flow pressure" means the pressure in the water supply pipe near the faucet or water outlet while the faucet or water outlet is wide-open and flowing.
104. "Flushing type floor drain" means a floor drain which is equipped with an integral water supply, enabling flushing of the drain receptor and trap.
105. "Flush valve" means a device located at the bottom of a tank for flushing water closets and similar fixtures.
- 105.1. "Flushometer tank" means a device integrated within an air accumulator vessel which is designed to discharge a predetermined quantity of water to fixtures for flushing purposes.
106. "Flushometer valve" means a device which discharges a predetermined quantity of water to fixtures for flushing purposes and is closed by direct water pressure.
107. "Frostproof closet" means a hopper with no water in the bowl and with the trap and water supply control valve located below frostline.
108. "F.U." means fixture units.
109. "Funnel drain" means a funnel-shaped receptor for receiving the discharge of an indirect waste pipe.
110. "G.P.M." means gallons per minute.
111. "Grade" means the fall (slope) of a line of pipe in reference to a horizontal plane. In drainage it is usually expressed as the fall in a fraction of an inch per foot length of pipe.
112. "Grease interceptor" means interceptor.
113. "Grease trap" means interceptor.
114. "Ground water" means subsurface water occupying the zone of saturation.
 - a. "Confined ground water" is a body of ground water overlain by material sufficiently impervious to sever free hydraulic connection with overlying ground water.

- b. "Free ground water" is ground water in the zone of saturation extending down to the first impervious barrier.
115. "Hangers" means supports.
116. "Health authority" means the state department of health or a county, city, or multi or combined county or city health unit.
117. "Horizontal branch drain" means a drain branch pipe extending laterally from a soil or waste stack or building drain, with or without vertical sections or branches, which receives the discharge from one or more fixture drains and conducts it to the soil or waste stack or to the building drain.
118. "Horizontal pipe" means any pipe or fitting which makes an angle of less than forty-five degrees with the horizontal.
119. "Hot water" means water supplied to plumbing fixtures at a temperature of not less than one hundred ten degrees Fahrenheit [-12.22 degrees Celsius], and not more than one hundred forty degrees Fahrenheit [60 degrees Celsius], except that commercial dishwashing machines and similar equipment shall be provided with water one hundred eighty degrees Fahrenheit [82.22 degrees Celsius] for sterilization purposes.
120. "House drain" means building drain.
121. "House sewer" means building sewer.
122. "House trap" means building trap.
123. "Individual sewage disposal system" means a system for disposal of domestic sewage by means of a septic tank, cesspool, or mechanical treatment, designed for use apart from a public sewer to serve a single establishment or building.
124. "Indirect waste pipe" means a waste pipe which does not connect directly with the drainage system, but which discharges into the drainage system through an air break or airgap into a trap, fixture, receptor, or interceptor.
125. "Individual vent" means a pipe installed to vent a fixture drain. It connects with the vent system above the fixture served or terminates outside the building into the open air.
126. "Individual water supply" means a supply other than an approved public water supply which serves one or more families.
127. "Industrial wastes" means liquid or liquid-borne wastes resulting from the processes employed in industrial and commercial establishments.

128. "Insanitary" means contrary to sanitary principles - injurious to health.
129. "Interceptor" means a device designed and installed so as to separate and retain deleterious, hazardous, or undesirable matter from normal wastes while permitting normal sewage or liquid wastes to discharge into the drainage system by gravity.
130. "Installed" means altered, changed, or a new installation.
131. "Interval" means branch interval.
132. "Invert" means the lowest portion of the inside of a horizontal pipe.
133. "Leaching well or pit" means a pit or receptacle having porous walls which permit the contents to seep into the ground.
134. "Leader" means an exterior vertical drainage pipe for conveying storm water from roof or gutter drains.
135. "Liquid waste" means the discharge from any fixture, appliance, area, or appurtenance, which does not contain human or animal waste matter.
136. "Load factor" means the percentage of the total connected fixture until flow which is likely to occur at any point in the drainage system.
137. "Local ventilating pipe" means a pipe on the fixture side of the trap through which vapor or foul air is removed from a room or a fixture.
138. "Loop vent" means a circuit vent which loops back to connect with a stack vent instead of a vent stack.
139. "Main" means the principal pipe artery to which branches may be connected.
140. "Main sewer" means public sewer.
141. "Main vent" means the principal artery of the venting system to which vent branches may be connected.
142. "May" is permissive.
143. "Multiple dwelling" means a building containing two or more dwelling units.
144. "Nonpotable water" means water not safe for drinking or for personal or culinary use.

145. "Nuisance" means public nuisance at common law or in equity jurisprudence; whatever is dangerous to human life or detrimental to health; whatever building, structure, or premise is not sufficiently ventilated, sewerred, drained, cleaned, or lighted, in reference to its intended or actual use; and whatever renders the air or human food or drink or water supply unwholesome.
146. "Offset" means a combination of elbows or bends which brings one section of the pipe out of line but into a line parallel with the other section.
147. "Oil interceptor" means interceptor.
148. "P.E." means polyethylene.
149. "Person" means a natural person, the natural person's heirs, executors, administrators or assigns, and includes a firm, partnership, or corporation, its or their successors or assigns. Singular includes plural and male includes female.
150. "Pitch" means grade.
151. "Plumbing" means the act of installing in buildings the pipes, installation, maintenance, extension, alteration, and removal of all piping, plumbing fixtures, plumbing appliances, and other facilitating apparatus for appurtenances in connections with bringing water into, and using the water in, buildings and for removing liquids and water-carried wastes therefrom.
152. "Plumbing appliance" means any one of a special class of plumbing fixture which is intended to perform a special plumbing function. Its operation or control may be dependent upon one or more energized components, such as motors, controls, heating elements, or pressure or temperature-sensing elements. Such fixtures may operate automatically through one or more of the following actions: a time cycle, a temperature range, a pressure range, a measured volume or weight; or the fixture may be manually adjusted or controlled by the user or operator.
153. "Plumbing appurtenance" means a manufactured device, or a prefabricated assembly, or an on-the-job assembly of component parts, and which is an adjunct to the basic piping system and plumbing fixtures. An appurtenance demands no additional water supply, nor does it add any discharge load to a fixture or the drainage system. It is presumed that it performs some useful function in the operation, maintenance, servicing, economy, or safety of the plumbing system.
154. "Plumbing fixture" means a receptacle or device which is either permanently or temporarily connected to the water distribution system of the premises, and demands a supply of

- water therefrom, or it discharges used water, liquid-borne waste materials, or sewage either directly or indirectly to the drainage system of the premises, or which requires both a water supply connection and a discharge to the drainage system of the premises. Plumbing appliances as a special class of fixture are further defined.
155. "Plumbing fixture" - private or private use" means in the classification of plumbing fixtures, fixtures in residences, apartments, or condominiums, or single fixtures for the intended use of a family or individual.
 156. "Plumbing fixture - public or public use" means in the classification of plumbing fixtures, every fixture not defined under private use and includes all installations where a number of fixtures are installed and their use may be restricted or unrestricted.
 157. "Plumbing inspector" means administrative authority.
 158. "Plumbing system" includes the water supply and distribution pipes, plumbing fixture, and traps; soil, waste, and vent pipes; sanitary and storm drains and building sewers, including their respective connections, devices, and appurtenances to an approved point of disposal.
 159. "Pollution" means the addition of sewage, industrial wastes, or other harmful or objectionable material to water. Sources of sewage pollution may be privies, septic tanks, subsurface irrigation fields, seepage pits, sink drains, barnyard wastes, etc.
 160. "Pool" means swimming pool.
 161. "Potable water" means water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the public health service drinking water standards or the regulations of the public health authority having jurisdiction.
 - 161.1. "Pressure gradient monitor" means a device used to protect the quality of potable water, fail-safe by design, protecting the water system by isolating the heat exchangers when the positive pressure differential is less than the set point.
 162. "Private or private use" means in the classification of plumbing fixtures, fixtures in residences and apartments and similar installations.
 163. "Private sewage disposal system" means a system for disposal of domestic sewage by means of a septic tank or mechanical

treatment, designed for use apart from a public sewer to serve a single establishment or building.

- 164. "Private sewer" means a sewer not directly controlled by public authority.
- 165. "P.S.I." means pounds per square inch.
- 166. "Public or public use" means, in the classification of plumbing fixtures, every fixture not defined under private use, and public includes all installations where a number of fixtures are installed and their use may be restricted or unrestricted.
- 167. "Public sewer" means a common sewer directly controlled by public authority.
- 168. "Public toilet room means an unrestricted toilet facility that serves the public.
- 169. "Public water main" means a water supply pipe for public use controlled by public authority.
- 169.1. "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections, or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year.
- 170. "P.V.C." means polyvinyl chloride.
- 171. "Receptor" means a fixture or device which receives the discharge from indirect waste pipes.
- 172. "Relief vent" means an auxiliary vent which permits additional circulation of air in or between drainage and vent systems.
- 173. "Return offset" means a double offset installed so as to return the pipe to its original alignment.
- 174. "Revent pipe" means individual vent.
- 175. "Rim" means an unobstructed open edge of a fixture.
- 176. "Riser" means a water supply pipe which extends vertically one full story or more to convey water to branches or to a group of fixtures.
- 177. "Roof drain" means a drain installed to receive water collecting on the surface of a roof and to discharge it into a leader or a conductor.

178. "Roughing-in" means the installation of all parts of the plumbing system which can be completed prior to the installation of fixtures. This includes drainage, water supply, and vent piping, and the necessary fixture supports, or any fixtures that are built into the structure.
179. "Safe waste" means indirect waste.
180. "Sand filter" means a treatment device or structure, constructed above or below the surface of the ground, for removing solid or colloidal material of a type that cannot be removed by sedimentation, from septic tank effluent.
181. "Sand interceptor" means interceptor.
182. "Sand trap" means interceptor.
183. "Sanitary sewer" means a sewer which carries sewage and excludes storm, surface and ground water.
184. "Scavenger" means any person engaged in the business of cleaning and emptying septic tanks, seepage pits, privies, or any other sewage disposal facility.
185. "Seepage well or pit" means leaching well.
186. "Separator" means interceptor.
187. "Septic tank" means a watertight receptacle which receives the discharge of a building sanitary drainage system or part thereof, and is designed and constructed so as to separate solids from the liquid, digest organic matter through a period of detention, and allow the liquids to discharge into the soil outside of the tank through a system of open joint or perforated piping, or a seepage pit.
188. "Sewage" means any liquid waste containing animal or vegetable matter in suspension or solution, and may include liquids containing chemicals in solution.
189. "Sewage ejectors" means a device for lifting sewage by entraining it in a high velocity jet of steam, air, or water.
190. "Sewage pump" means a permanently installed mechanical device other than an ejector for removing sewage or liquid waste from a sump.
191. "Shall" is mandatory.
192. "Shock arrestor (mechanical device)" means a device used to absorb the pressure surge (water hammer) that occurs when water flow is suddenly stopped.

193. "Side vent" means a vent connecting to the drainpipe through a fitting at an angle not greater than forty-five degrees to the vertical.
194. "Siphon" means an arrangement of plumbing piping, fittings, or device that will allow liquid to flow from a higher level to a lower level over an intervening level at a velocity sufficient to break the water seal of a trap.
195. "Size of pipe and tubing" means diameter.
196. "Slope" means grade.
197. "Soil pipe" means a pipe which conveys sewage containing human or animal waste to the building drain or building sewer.
198. "Soil vent" means stack vent.
199. "Special waste pipe" means a pipe which conveys special wastes.
200. "Special wastes" means wastes which require special treatment before entry into the normal plumbing system.
201. "S.P.S." means standard pipe size.
202. "Stack" means any vertical line of soil, waste, vent, or inside conductor piping extending through one or more stories. ~~This does not include vertical fixture and vent branches that do not extend through the roof or that pass through not more than two stories before being reconnected to the vent stack or stack vent.~~
203. "Stack group" means a group of fixtures located adjacent to the stack so that by means of proper fittings, vents may be reduced to a minimum.
204. "Stack vent" means the extension of a soil or waste stack above the highest horizontal drain connected to the stack.
205. "Stack venting" means a method of venting a fixture or fixtures through the soil or waste stack.
206. "Static line pressure" means the pressure existence without any flow.
207. "Sterilizer, boiling type" means a fixture (nonpressure type) used for boiling instruments, utensils, or other equipment (used for disinfection) and may be portable or connected to the plumbing system.
208. "Sterilizer instrument" means a sterilizer, boiling type.

209. "Sterilizer, pressure, instrument washer" means a fixture (pressure vessel) designed to both wash and sterilize instruments during the operating cycle of the fixture.
210. "Sterilizer, pressure (autoclave)" means a fixture (pressure vessel) designed to use steam under pressure for sterilizing. See Sterilizer, boiling type.
211. "Sterilizer vent" means a separate pipe or stack, indirectly connected to the building drainage system at the lower terminal, which receives the vapors from nonpressure sterilizers, or the exhaust vapors from pressure sterilizers, and conducts the vapors directly to the outer air. Sometimes called a vapor, steam, atmosphere, or exhaust vent.
212. "Sterilizer, water" means a device for sterilizing water and storing sterile water.
213. "Still" means a device used in distilling liquids.
214. "Storm drain" means building storm drain.
215. "Storm sewer" means a sewer used for conveying rainwater, surface water, condensate, cooling water, or similar liquid wastes.
216. "Subsoil drain" means a drain which collects subsurface or seepage water and conveys it to a place of disposal.
217. "Sump" means a tank or pit, which receives sewage or liquid waste, located below the normal grade of the gravity system and which must be emptied by mechanical means.
218. "Sump drainage" means a liquid and airtight tank that receives sewage or liquid waste, or both, located below the elevation of the gravity system, and is emptied by pumping.
219. "Sump pump" means a permanently installed mechanical device other than an ejector for removing sewage or liquid waste from a sump.
220. "Supports" means devices for supporting and securing pipe, fixtures, and equipment.
221. "Swimming pool" means any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, wading, or recreational bathing.
222. "Tailpiece" means a connection used from outlet of fixture strainer to trap connection.
223. "Tempered water" means water at a temperature of not less than ninety degrees Fahrenheit [32.22 degrees Celsius] and not more

than one hundred five degrees Fahrenheit [40.56 degrees Celsius].

- 224. "Trap" means a fitting or device which provides a liquid seal to prevent the emission of sewer gases without materially affecting the flow of sewage or wastewater through it.
- 225. "Trap arm" means that portion of a fixture drain between a trap and its vent.
- 226. "Trap primer" means a device or system of piping to maintain a water seal in a trap.
- 227. "Trap seal" means the vertical distance between the crown weir and the top of the dip of the trap.
- 228. "Vacuum" means any pressure less than that exerted by the atmosphere.
- 229. "Vacuum breaker" means backflow preventer.
- 230. "Vacuum breaker, nonpressure type (atmospheric)" means a vacuum breaker which is not designed to be subject to static line pressure.
- 231. "Vacuum breaker, pressure type" means a vacuum breaker designed to operate under conditions of static line pressure.
- 232. "Vacuum relief valve" means a device to prevent excessive vacuum in a pressure vessel.
- 233. "Vent pipe" means part of the vent system.
- 234. "Vent stack" means a vertical vent pipe installed to provide circulation of air to and from the drainage system and which extends through one or more stories.
- 235. "Vent system" means a pipe or pipes installed to provide a flow of air to or from a drainage system or to provide a circulation of air within such system to protect trap seals from siphonage and back pressure.
- 236. "Vertical pipe" means any pipe or fitting which makes an angle of forty-five degrees or less with the vertical.
- 237. "Wall hung water closet" means a water closet installed in such a way that no part of the water closet touches the floor.
- 238. "Waste" means liquid waste and industrial waste.
- 239. "Waste pipe" means a pipe which conveys only waste.

240. "Water distributing pipe" means a pipe within the building or on the premises which conveys water from the water-service pipe to the point of usage.
241. "Water lifts" means sewage ejector.
242. "Water main" means a water supply pipe for public use.
243. "Water outlet" means a discharge opening through which water is supplied to a fixture, into the atmosphere (except into an open tank which is part of the water supply system), to a boiler or heating system, to any devices or equipment requiring water to operate but which are not part of the plumbing system.
244. "Water riser pipe" means riser.
245. "Water service pipe" means the pipe from the water main or other source of potable water supply to the water distributing system of the building served.
246. "Water supply system" means the water service pipe, the water-distributing pipes, and the necessary connecting pipes, fittings, control valves, and all appurtenances in or adjacent to the building or premises.
- 246.1. "Water temperature control valve" means a valve of the pressure balancing, thermostatic mixing, or combination pressure balance thermostatic mixing type, which is designed to control water temperature to reduce the risk of scalding.
247. "Wet vent" means a vent which receives the discharge of wastes other than from water closets and kitchen sinks.
- 247.1. "Whirlpool bathtub" means a bathtub fixture which is equipped and fitted with a circulation piping system, pump, and other appurtenances and is so designed to accept, circulate, and discharge bathtub water upon each use.
248. "Yoke vent" means a pipe connecting upward from a soil or waste stack to a vent stack for the purpose of preventing pressure changes in the stack.

History: Amended effective July 1, 1985; October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-02-03. Change in direction.

1. ~~Fittings used to change direction: Changes in direction in drainage piping shall be made by the appropriate use of forty-five degree wyes, long or short sweep quarter bends, sixth,~~

~~eight, or sixteenth bends, or by a combination of these or equivalent fittings.~~

- ~~2.~~ 2. Short sweeps permitted. Short sweeps may be used in soil and waste lines where the change in direction of flow is from the horizontal to the vertical.
- ~~3.~~ 3. Horizontal to vertical. Horizontal drainage lines, connecting with a vertical stack, shall enter through forty-five degree "Y" branches, sixty degree "Y" branches, combination "Y" and one-eighth bend branches, sanitary tee or sanitary tapped tee branches, or other approved fittings of equivalent sweep. No fitting having more than one branch at the same level shall be used unless such fitting is constructed so that the discharge from any one branch cannot readily enter any other branch. Quarter bends may be used in soil and waste lines where the change in direction of flow is from the horizontal to the vertical.
- ~~4.~~ 2. Horizontal to horizontal. Horizontal drainage lines connecting with other horizontal drainage lines shall enter through forty-five degree "Y" branches, combination "Y" and one-eighth bend branches, or other approved fittings of equivalent sweep.
- ~~5.~~ 3. Vertical to horizontal. Vertical drainage lines connecting with horizontal drainage lines shall enter through forty-five degree "Y" branches, combination "Y" and one-eighth bend branches, or other approved fittings of equivalent sweep.
- ~~6.~~ 4. Individual branches. Nothing in this section shall preclude the use of short sweep fittings in a branch waste line serving one outlet.
- ~~7.~~ 5. Back-to-back fixtures. Back-to-back fixtures shall be installed with fittings that will prevent the mixing of the discharge prior to a change in direction of flow of the discharge from each fixture or shall be installed with fittings especially designed to eliminate throwover of one discharge to the other.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-02-09. Protection of pipes.

1. Breakage. Pipes passing under or through walls shall be protected from breakage. Any plumbing pipe passing under a footing or through a foundation wall shall be provided with a relieving arch; ~~or there shall be built into the masonry wall an iron pipe sleeve two pipe sizes greater than the pipe~~

~~passing through~~ or equivalent protection shall be provided as may be approved in writing by the administrative authority.

2. **Corrosion.** Pipe subject to corrosion by passing through or under corrosive fill, such as, but not limited to, cinders, concrete, or other corrosive material, shall be protected against external corrosion by protective coating, wrapping, or other means which will resist such corrosion.
3. **Cutting or notching.** Any structural member weakened or impaired by cutting, notching, or otherwise shall be reinforced, repaired, or replaced, so as to be left in a safe structural condition in accordance with the requirements of the building code or as required by the proper administrative authority.
4. **Protection against physical damage.** Where subject to physical damage, copper and plastic pipe shall be adequately protected.
 - a. Pipe through wood framing members.
 - (1) Bored holes. In both exposed and concealed locations, where a pipe is installed through bored holes in joists, rafters, or similar structural wood members, holes shall be bored at the approximate center of the face of the member. Holes in studs for pipe shall be bored at the approximate center of the face of the member but not less than one inch [2.54 centimeters] from the nearest edge or shall be protected from nails and screws by either a steel plate or sleeve at least one-sixteenth inch [1.59 millimeters] thick and of appropriate length and width installed to cover the area through which nails or screws might penetrate the installed pipe.
 - (2) Notches in wood. Where there is no objection because of weakening the building structure, in both exposed and concealed locations, pipe shall be permitted to be laid in notches in wood studs, joists, rafters, or other wood members where the pipe at those points is protected against nails or screws by a steel plate at least one-sixteenth inch [1.59 millimeters] thick installed before the building finish is applied.
 - b. Pipes through metal framing members. In both exposed and concealed locations where pipes pass through either factory or field punched, cut, or drilled slots or holes in metal members, the pipe shall be protected by sleeves or grommets approved for the purpose securely fastened in the opening. Where nails or screws are likely to penetrate the pipe, a steel sleeve not less than one-sixteenth inch [1.59 millimeters] in wall thickness shall be used to protect the pipe. Sleeves or grommets shall

not be required under this subdivision when the slots or holes are so formed that no metal edge can cut plastic pipe.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-02-12. Sleeves. In exterior walls annular space between sleeves and pipes shall be filled or rightly caulked with coal tar, asphaltum compound, lead, or other material found equally effective and approved as such by the administrative authority.

1. Sleeves must be provided to protect all piping through concrete or masonry exterior or bearing walls.
2. Sleeves must be sized so there is a minimum of one-half-inch [12.7-millimeter] clearance around the pipe or insulation, or both.
3. Piping through concrete or masonry walls shall not be subject to any load from building construction.
4. In exterior walls, annular space between sleeves and pipes must be filled or tightly caulked with coal tar asphaltum compound, lead, or other material found equally effective and approved as such by the administrative authority.
5. Any pipe sleeve through a firewall must have the space around the pipe completely sealed with an approved fire-resistive material in accordance with all other codes.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-02-16. Freezing or overheating. The plumbing system must be protected from freezing or overheating. The following conditions must be met:

1. Water service piping must be installed below recorded frostlines. Minimum earth cover must be seven feet [2.13 meters].
2. Minimum earth cover for building sewers must be four feet [1.22 meter].
3. In systems which are used seasonally, water piping must be installed to be drained as permitted in subsection † of section ~~62-03-03.1-03~~ 62-03-03.1-12.

4. Water, soil, or waste piping is not permitted outside of a building, in an exterior wall, or in any area subject to freezing temperatures unless complete and proper provision is made to protect such pipe from freezing.
5. Piping must be installed so that the contents will not be heated due to close proximity to any heat source or from direct solar radiation.

History: Amended effective November 1, 1979; July 1, 1985; October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-03.1-01. Materials.

1. Standards. The standards cited in this chapter control all materials, systems, and equipment used in the construction, installation, alteration, repair, or replacement of any plumbing or drainage system or part thereof, except:
 - a. The administrative authority shall allow the extension, addition to, or relocation of, existing water, soil, waste vent pipes with materials of like grade or quality as permitted in subsection 2 of section 62-03-03.1-12.
 - b. Materials not covered by the standards cited in this chapter may be used with the approval of the administrative authority as permitted in subsection 2 of section 62-03-03.1-12.
2. General requirements. All materials, fixtures, or equipment used in the installation, repair, or alteration of any plumbing system must conform at least to the standards listed in this chapter except as otherwise approved by the administrative authority under the authority contained in section 62-03-03.1-12.

All materials installed in plumbing systems must be so handled and installed as to avoid damage so that the quality of the material will not be impaired.

No defective or damaged materials, equipment, or apparatus may be installed or maintained. (Sections 62-03-02-14 and 62-03-02-15).

All materials used must be installed in strict accordance with the standards under which the materials are accepted and approved, including the appendices of the standards, and in strict accordance with the manufacturer's instructions.

3. Standards applicable to plumbing materials. A material is considered approved if it meets one or more of the standards cited in Table 62-03-03.1, Standards for Approved Plumbing Materials and Equipment; and in the case of plastic pipe, also the listed standard of the national sanitation foundation. Materials not listed in Table 62-03-03.1 may be used only as provided for in subsection 2 of section 62-03-03.1-12 or as permitted elsewhere in this article.

Note: Abbreviations in Table 62-03-03.1 refer to the following organizations:

- ANSI American National Standards Institute
1430 Broadway
New York, New York 10018
- ARI Air Conditioning and Refrigeration Institute
1815 North Fort Myer Drive
Arlington, Virginia 22209
- ASSE American Society of Sanitary Engineering
P.O. Box 9712
Bay Village, Ohio 44140
- ASTM American Society for Testing and Materials
1916 Race Street
Philadelphia, Pennsylvania 19103
- AWWA American Water Works Association
521 Fifth Avenue
New York, New York 10017
- CISPI Cast Iron Soil Pipe Institute
1499 Chain Bridge Road
McLean, Virginia 22101
- CMI Cultured Marble Institute
435 North Michigan Avenue
Chicago, Illinois 60611
- CS Commercial Standards
Commodity Standards Division
Office of Industry and Commerce
Washington, D.C. 20230
- CSA Canadian Standards Association
178 Rexdale Boulevard., Rexdale
Toronto, Ontario, Canada M9W1R3
- FS Federal Supply Service
Standards Division
General Services Administration
Washington, D.C. 20405

IAPMO International Association of Plumbing
and Mechanical Officials
5032 Alhambra Avenue
Los Angeles, California 90032

MSS Manufacturing Standardization Society
5203 Leesburg Pike, Suite 502
Falls Church, Virginia 22041

NSF National Sanitation Foundation
Ann Arbor, Michigan 48106

PDI Plumbing and Drainage Institute
5342 Boulevard Place
Indianapolis, Indiana 46208

UL Underwriter's Laboratory
333 Pfingsten Road
Northbrook, Illinois 60062

4. Identification of materials. Materials must be identified as provided in the standard to which they conform.

History: Effective July 1, 1985; amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-03.1-03. Fittings, fixtures, appliances, and appurtenances.

1. Cleanout plugs and cap.

- a. Cleanout plugs must be of brass, plastic, stainless steel, or other approved materials and must be raised or countersunk square heads, except that where raised heads will cause a tripping hazard, countersunk heads must be used.
- b. Cleanout caps must be of brass, plastic, reinforced neoprene, cast iron, or other approved material and shall be readily removable.

2. Fixtures.

- a. Plumbing fixtures must be constructed from approved materials having smooth, nonabsorbent surfaces and be free from defects, and except as permitted elsewhere in this article, must conform to the standards cited in Table 62-03-03.1-01.3.
- b. Materials for special use fixtures not otherwise covered in this article must be constructed of materials

especially suited to the use for which the fixture is intended.

3. Floor flanges and mounting bolts.

- a. Floor flanges for water closets or similar fixtures may ~~be~~ not be less than one-eighth inch [3.18 millimeter] thick for brass, one-fourth inch [6.35 millimeter] thick and not less than one and one-half inches [38.1 millimeters] caulking depth for cast iron or galvanized malleable iron. Approved copper and plastic flanges may be used.
- b. If of hard lead, they must weigh not less than one pound nine ounces [70.87 decigrams] and be composed of lead alloy with not less than seven and seventy-five hundredths percent antimony by weight. Flanges must be soldered to lead bends, or shall be caulked, soldered, or threaded into other metal.
- c. All plastic flanges shall conform to current national sanitation foundation standards.
- d. Closet screws and bolts shall be brass.
- e. The top of the closet flange must be installed above the finished floor not to exceed more than one-fourth inch [6.35 millimeters].

4. Flush pipes and fittings. Flush pipes and fittings must be of nonferrous material. When of brass or copper tube, the material must be at least three hundred thirteen ten-thousandths of an inch [.795 millimeter] in thickness [No. 20 U.S. gauge].

5. Hangers and supports. Hangers, anchors, and supports must be of metal or other material of sufficient strength to support the piping and its contents. Piers may be of concrete, brick, or other approved material.

6. Interceptors. Interceptors must comply, in all respects, with the type or model of each size thereof approved by the administrative authority.

7. Pressure tanks and vessels.

- a. Hot water storage tanks must meet construction requirements of American society of mechanical engineers, American gas association, or underwriter's laboratory as appropriate (see standards Table 62-03-03.1).
- b. Storage tanks less in volume than those requirements specified by American society of mechanical engineers shall be of durable materials and constructed to withstand

one hundred twenty-five pounds per square inch [56.70 kilograms per 6.45 square centimeters] with a safety factor of two.

8. **Roof drains.** Roof drains must be of cast iron, copper, lead, or other approved corrosion-resisting materials.
9. **Safety devices for pressure tanks.** Safety devices must meet the requirements of the American national standards institute, the American society of mechanical engineers, or the underwriters laboratories. Listing by underwriters laboratories, American gas association, or national board of boiler and pressure vessel inspectors constitutes evidence of conformance with these standards. Where a device is not listed by any of these, it must have certification by an approved laboratory as having met these requirements.
10. **Septic tank.**
 - a. Plans for all septic tanks must be submitted to the approving authority for approval. The plans must show all dimensions, reinforcing, structural calculations, and such other pertinent data as may be required.
 - b. Septic tanks must be constructed of sound durable materials, not subject to excessive corrosion or decay, and must be watertight. (See subsections 4 and 5 of section 62-03-16-06).

History: Effective July 1, 1985; amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-03.1-06. Sanitary drainage and indirect waste systems.

1. **Aboveground piping - Sanitary and indirect drainage.** Soil and waste piping aboveground in buildings must be of brass pipe, copper pipe, copper tube drainage, waste and venting weight or heavier, cast iron soil pipe, galvanized steel pipe, lead pipe, or acrylonitrile-butadiene-styrene, or polyvinyl chloride, drainage, waste and venting, schedule ~~30~~ 40 or heavier plastic pipe. When plastic pipe is installed each soil or waste stack (does not include stack vent) may not exceed thirty-five feet [10.67 meters] in height. Horizontal offsets in stacks, horizontal branches connected to stacks and building drains aboveground are limited to a maximum developed length of thirty-five feet [10.67 meters].
2. **Underground building sanitary drains.** All underground building drains must be cast iron soil pipe, hard-temper copper tube type L, or heavier, or acrylonitrile-butadiene-styrene, or polyvinyl chloride,

drainage, waste and venting, schedule 40 or heavier plastic pipe. Where ferrous threaded joints are used underground, they must be coal tar coated or equivalent approved protection applied when installed.

3. Building sanitary sewer.

a. In trench separate from water service. If the building sewer is installed in a trench separate from the water service, the sewer pipe material must be ~~asbestos cement~~, bituminized fiber, cast iron, concrete, vitrified clay, copper, acrylonitrile-butadiene-styrene, or polyvinyl chloride, drainage, waste and venting schedule 40 or heavier, or acrylonitrile-butadiene-styrene, or polyvinyl chloride, sewer pipe (SDR 35 or heavier) plastic pipe. Joints must be watertight and rootproof.

b. In trench with water service. If the building sewer is installed in the same trench as the water service, the sewer pipe material must be cast iron, acrylonitrile-butadiene-styrene, or polyvinyl chloride, drainage, waste and venting, schedule 40 or heavier. The conditions in subsection 1 of section 62-03-10-06 must also be met.

4. Fittings. The materials of which drainage system pipe fittings are made must conform to the type of piping materials used in the drainage system. The fittings may have no ledges, shoulders, or reductions which can retard or obstruct flow in the piping. Threaded drainage pipe fittings must be of the recessed drainage type, black or galvanized.

History: Effective July 1, 1985; amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-03.1-07. Local vent systems. Material for local vents serving bedpan washers and sterilizer vents serving sterilizers, must be ~~sufficiently rustproof~~, erosion and corrosion resistant to withstand intermittent wetting and drying from steam vapors, the distilled water solvent action of the steam vapors, and frequent and immediate changes of temperatures.

History: Effective July 1, 1985; amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-03.1-08. Potable water supply systems.

1. Water service pipe. Water service pipe to point of entrance to the building must be made of ~~asbestos cement pipe~~, brass

pipe, copper tube or copper pipe, cast iron water pipe, or galvanized steel pipe, or approved plastic pipe (minimum pressure rating - one hundred sixty pounds per square inch - 73F). Copper tube when used underground may not be less than type L. All threaded ferrous pipe and fittings must be galvanized or cement lined and, when used underground in corrosive soil or filled ground, must be coal tar enamel-coated and threaded joints must be coated and wrapped when installed (see subsection 4).

2. **Water distribution system pipe.** Water distribution system pipe must be of brass pipe, copper tube or copper pipe, galvanized steel pipe, or approved plastic pipe (see subsection 4).
3. **Fittings.** The materials of which water supply system pipe fittings are made must be compatible with the type of piping materials used in the water supply system (see subsection 4).
4. **Material strength.**
 - a. All materials used for water piping must be suitable for use with the maximum temperature, pressure, and velocity that may be encountered in the installation, including temporary increases and surges.
 - b. When the standards for the piping material used for hot and cold water distribution limit the working pressure or temperature to values lower than usually encountered, the relief valve may be set no higher than the limits of the standard.
5. **Limitation of lead content.** Pipe and fittings used in the potable water supply system may not contain more than eight percent lead.

History: Effective July 1, 1985; amended effective January 1, 1988; October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-03.1-09. Storm drainage systems.

1. **Interior conductors.** Interior conductors installed aboveground in buildings must be of brass pipe, copper pipe, copper tube, drainage, waste and venting weight or heavier, cast iron soil pipe, galvanized steel pipe, lead pipe, acrylonitrile-butadiene-styrene or polyvinyl chloride, drainage, waste and venting schedule 40 or heavier plastic pipe, or acrylonitrile-butadiene-styrene or polyvinyl chloride sewer pipe SDR 35 or heavier for interior conductors six inches [15.24 centimeters] in diameter or larger.

2. **Exterior leaders.** Exterior leaders must be of approved sheet metal or other acceptable material.
3. **Underground building storm drains.** All underground building storm drains must be cast iron soil pipe, hard-temper copper tube type drainage, waste and venting, or heavier, acrylonitrile-butadiene-styrene or polyvinyl chloride drainage, waste and venting, schedule 40 or heavier plastic pipe or acrylonitrile-butadiene-styrene or polyvinyl chloride sewer pipe SDR 35 for building drains six inches [15.24 centimeters] in diameter or larger. Where ferrous threaded joints are used underground, they must be coal tar coated or equivalent approved protection applied when installed.
4. **Building storm sewer.** The building storm sewer must be of asbestos cement, bituminized fiber, cast iron soil pipe, concrete, vitrified clay, copper tube type drainage, waste and venting, acrylonitrile-butadiene-styrene, or polyvinyl chloride drainage, waste and venting schedule ~~30~~ 40 or heavier plastic pipe, or acrylonitrile-butadiene-styrene, or polyvinyl chloride sewer pipe SDR 35 or heavier.

History: Effective July 1, 1985; amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-03.1-10. Venting systems.

1. **Aboveground.** Vent piping aboveground in buildings must be of brass pipe, copper pipe, copper tube, drainage, waste and venting weight or heavier, cast iron soil pipe, galvanized steel pipe, lead pipe, or acrylonitrile-butadiene-styrene, or polyvinyl chloride drainage, waste and venting schedule ~~30~~ 40 or heavier plastic pipe.
2. **Underground.** All underground vent piping must be cast iron soil pipe, hard-temper copper tube type drainage, waste and venting or heavier, acrylonitrile-butadiene-styrene, or polyvinyl chloride drainage, waste and venting schedule 40 or heavier plastic pipe. Where ferrous threaded joints are used underground, they must be coal tar coated or equivalent approved protection applied when installed.
3. **Fittings.** Fittings must be compatible with the type of pipe used in the vent system as required by subsections 1 and 2 or when used with galvanized pipe they may be black drainage fittings, black steam pattern fittings, or galvanized malleable fittings.

History: Effective July 1, 1985; amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Ferrous Pipe, Fittings and Valves				
Cast Iron Drainage Fittings, Threaded	B16.12-1977	None	WW-P-491b-1967	None
Cast Iron Fittings (UPC specials)	None	None	None	IAPMO PS 5-77
Cast Iron Screwed Fittings (Threaded)	B16.4-1977	None	WW-P-501d-1967	None
Cast Iron Pipe (Threaded) D.W.V.	A40.5-1943	None	WW-P356a-1967	None
Cast Iron Pipe, Thickness Design of	A21.1-1967 (R-77)	None	WW-P-421c-1967	None
Cast Iron Soil Pipe and Fittings Hub & Spigot	None	A74-72 <u>82</u>	WW-P-401e-1974	None
Cast Iron Water Pipe (2")	None	A377-66	WW-P-360b-1968	None
Cast Iron Water Pipe (Cast in metal molds)	None	A377-66	WW-P-421c-1967	None
Cast Iron Water Pipe (Cast in sand lined molds)	None	A377-66	WW-P-421c-1967	None
Cast Iron Water Pipe Fittings	A21.10-1977	A377-66	None	*AWWA C110-77
Ductile-Iron Pipe	A21.51-1976	A377-66	WW-P-421c-1967	*AWWA C151-81
Groove & Shoulder Type Joints (Split Couplings)	None	None	None	*AWWA C606-81
Cast Iron Soil Pipe and Fittings for Hubless Cast Iron Sanitary System	None	None	WW-P-104e-1974	CISPI 301- 82 <u>85</u>
Malleable Iron Screwed Fittings 150 and 300 lbs.	B16.3-1977	None	WW-P-521f-1968	None
Nipples, Pipe, Threaded	None	None	WW-N-351 b(1)-1970	None
Pipe Fittings, Ferrous (Bushings, plugs, and locknuts)				
Threaded, 125 and 150 lbs.	B16-14-1977	None	WW-P-471b-1970	None
Pipe Threads (except Dry seal)	BSR/ASME	None	None	HBS Handbook
	B1.20.1-1982			<u>H28-Part II-66</u>
Steel Pipe, Stainless	B125.16-1975	A312-75	None	None
Steel, Stainless, Water-DWV Tubes	None	A651-71	None	None
Steel Pipe, Welded or Seamless (for coiling)				
Black or Galvanized	None	A53- 77a <u>83</u>	WW-P-471b-1970 Int Amend 3-1971	None

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(DIAGRAMS AND CHARTS THAT FOLLOW CHAPTER 62-03-03.1)

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Steel Pipe, Welded or Seamless Black or Galvanized	None	A120-77 <u>83</u>	WW-P-406d(1)-1973	None
Steel Pipe (Cement-mortar lining and Reinforced Cement-mortar coating)	A21.4-1980	None	SS-P-385a(1)-1968	AWWA C205-80
Steel Pipe (Coat tar enamel or cement mortar lining and coal tar enamel coated and wrapped)	None	None	WW-P-1432-1970	*AWWA C203-78
Unions, Pipe, Steel or Malleable Iron	B16.39-1977	None	WW-U-531c-1965	None
Valves, Ball	None	None	WW-V-35a-1965 Int Amend 2-1970	None
Valves, Cast Iron, Gate 125 and 250 lb.	None	None	WW-V-58b-1971	MSS-SP-70-1976
Valves, Cast Iron, Swing check	None	None	None	MSS-SP-71-1976
Wrought Iron Pipe, Welded, Black or Galvanized	None	A 72-68	None	None
Non-Ferrous Metallic Pipe, Fittings and Valves				
Brass Tube, Seamless	None	B135-82	WW-T-791a-1974	None
Brass Tube, Red, Seamless, Pipe, Standard Sizes	None	B43-80 <u>84a</u>	WW-P-351a-1963	None
Bronze Pipe Flanges and Flanged Fittings	B16.24-1979	None	None	None
Cast Bronze Copper Alloy Fittings for Flared Copper Tubes	B16.2624-1975 <u>83</u>	None	None	None
Cast Bronze Copper Alloy Solder-joint Pressure Fittings	B16.18-1978 <u>84</u>	None	WW-T-00725-1967	None
Cast Bronze Copper Alloy Solder-joint Drainage Fittings	B16.23-1976 <u>84</u>	None	None	None
Copper Pipe, Seamless, Standard Sizes	None	B42-82 <u>84</u>	WW-P377d-1962	None
Copper Pipe, Threadless	None	B302-84 <u>84</u>	WW-P-377d-1962	None
Copper Tube, Drainage DWV	None	B306-84 <u>83</u>	None	None
Copper Tube, Seamless	None	B75-84a	WW-T-797a-1963	None
Copper Tube Welded	None	B447-80	None	None
Copper Tube, Water, Seamless, Types K, L & M	None	B88-84 <u>83a</u>	WW-T-799d-1971	None
Copper & Copper Alloy Pipe & Tube				
General Requirements-	None	B251-81	None	None

TABLE 62-03-03-1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Copper & Copper Alloy Tube, Welded	None	B543-82 B587-88	None	None
Copper Alloy Water Tube, Welded	None	B506-80 B642-81	None	None
<p>Note: Standards on materials do not imply that these materials may be used for a specific service. Materials shall be used to conform with the scope of the standards listed.</p>				
<p>Note: * A standard also listed by ANSI</p>				
<p>Note: † All provisions in this standard concerning potable water applications shall be mandatory to assure compliance with this Code.</p>				
Non-Ferrous Metallic Pipe, Fittings & Valves				
Copper Tube, Seamless, Welded, Distribution Type "D"	None	B641-81	None	None
Lead Pipes, Bends and Traps	None	None	WW-P-325a-1967	None
Pipe Fittings, Brass or Bronze, 125 and 250 lbs. Cast or Wrought	B16.15-1978	None	WW-P-460b-1967	None
Pipe Nipples, Brass, Copper, Steel and Wrought Iron	None	None	None	68-5-65
Solder-joint Fittings, Pressure, <u>Wrought Copper,</u> <u>Copper and Copper Alloy</u>	B16.22-1980	None	WW-T-00725-1967	None
Solder-joint Fittings, Drainage, <u>DWV Wrought</u> <u>Copper and Copper Alloy</u>	B16.29-1980	None	None	None
Unions, Brass or Bronze, 250 lbs.	None	None	WW-V-35a-1965 Int Amend 2-1970	MSS-SP-72-1970
Valves, Angle, Check and Globe, Bronze 125 lb. Screwed, Flanged or Solder	None	None	WW-V-51d-1967	None

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Non-Metallic Pipe and Fittings				
-Asbestos-Cement Non-pressure Sewer Pipe	None	*G420-80	-None	-None
-Asbestos-Cement Non-pressure Small Diameter Sewer Pipe (4", 5", 6")	None	*G644-80	None	-None
Asbestos-Cement Underdrain Pipe	A165.2-1976	*C503-78a	-None	None
-Asbestos-Cement Pressure Pipe	None	*C296-78	-None	*AWWA-E400-88
-Asbestos-Cement Storm Drain Pipe	A165.7-1974	*G663-78	None	None
Asbestos-Cement Transmission Pipe	A165.8-1974	G668-76	-None	*AWWA-E-402-77
Bituminized Fiber Drain and Sewer Pipe, Homogeneous Wall	A176.1-1971	*D1861-77	SS-P-1540a-1969 Int Amend 1-1970	None
Bituminized Fiber Drain and Sewer Pipe, Laminated Wall	A176.2-1972	*D1862-77	SS-P-1540a-1969 Int Amend 1-1970	None
Bituminized Fiber Pipe, Perforated, for Septic Tank Disposal Fields, Homogeneous Wall	A176.4-1971	*D2312-77	SS-P-1540a-1969 Int Amend 1-1970	None
Bituminized Fiber Pipe, Perforated, for Septic Tank Disposal Fields, Laminated Wall	A176.5-1971	*D2313-77	SS-P-1540a-1969 Int Amend 1-1970	None
Clay Drain Tile, Specifications For	A6.1-1963 (R1972)	C462-75	SS-P-1299a-1968	None
Clay Drain Tile, Perforated	None	C498-75	SS-P-359b-1960	None
Clay Pipe, Perforated, Standard and Extra Strength	A106.8-1978	*C700-78	SS-P-361E	None
Concrete Drain Tile	None	C412-78	None	None
Concrete Low Head Pressure Pipe, Reinforced	None	C361-78	None	None

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Concrete Pipe, Perforated	None	* C444-79	None	None
Concrete Pipe (Sewer, Storm Drain and Culvert) Non-reinforced	None	* C14M-80	SS-P-371e-1968	None
Concrete Pipe, Pressure, Reinforced Concrete, pretensioned reinforcement (Steel Cylinder Type)	None	None	SS-P-391 A (1)1969 SS-P-381 A (2)1972	*AWWA C303-78
Concrete Pipe (Culvert, Storm Drain, and Sewer) Reinforced	None	* C76M-80	SS-P-375d-1970	None
** Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe, Schedules 40 and 80	B72.5-1971	* D1527-77 <u>82</u>	None	NSF 14 See ASTM D2774 for underground installation procedures
** Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe, (SDR-PR and Class T)	B72.3-1975	* D2282-77 <u>82</u>	None	NSF14 See ASTM D2774 for underground installation procedures
<u>Underground Installation of Thermoplastic Pressure Piping</u>	None	<u>D2774-83</u>	None	None
<u>Underground Installation of Flexible Thermoplastic Pressure Piping</u>	None	<u>D2321-84</u>	None	None
Socket-Type Acrylonitrile-Butadiene Styrene (ABS) Plastic Pipe Fittings, Scheduled 40	K65.164-1971	* D2468-80 <u>85</u>	None	NSF 14

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Socket-Type Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe Fittings, Schedule 80	K65.163-1971	* D2469-76	None	NSF 14
<p>Note: Standards on materials do not imply that these materials may be used for a specific service. Materials shall be used to conform with the scope of the standards listed.</p> <p>Note: *Standard also listed by ANSI.</p> <p>Note: † All provisions in this standard concerning potable water applications shall be mandatory to assure compliance with this code.</p>				
Non-Metallic Pipe and Fittings				
Threaded Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe Fittings, Schedule 80	K65.165-1971	* D2465-73 72	None	NSF 14
Acrylonitrile-Butadiene-Styrene (ABS) Plastic Drain, Waste, and Vent Pipe and Fittings, Schedule 40	B72.18-1971	* D2661-81 85a	LP-332B-73	NSF 14 See ASTM Appendix XI for installation procedures
Acrylonitrile-Butadiene-Styrene (ABS) Plastic Drain, Waste & Vent Pipe having a Foam Core <u>Schedule 40 with a cellular core</u>	None	F269 628-79e 85	None	NSF 14 See ASTM Appendix A1 for installation procedures
Acrylonitrile-Butadiene-Styrene (ABS) Sewer Pipe and Fittings	None	D2751-68 83	None	NSF 14 See ASTM D2321 for underground installation procedures

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
** Solvent Cement for Acrylonitrile-Butadiene-				
Styrene (ABS) Plastic Pipe and Fittings	B72.23-1971	* D2235-81± ±	None	NSF 14
Polyethylene (PE) Plastic Pipe, Schedule 40	B72.8-1971	* D2104-74 85	None	NSF 14 See ASTM D2774 for underground installa- tion procedures
** Polyethylene (PE) Plastic Pipe, Schedules 40 and 80 Based on Outside Diameter	B72.13-1971	* D2447-74 85	None	NSF 14 See ASTM D2774 for underground installa- tion procedures
** Polyethylene (PE) Plastic Pipe, (SDR-PR) (SIDR-PR) Based on Controlled Inside Diameter	B72.1-1975	* D2239-81 85	L-P-315c-1972 L-P-315c-2-1975	NSF 14 See ASTM D2774 for underground installa- tion procedures
<u>Butt Heat Fusion Polyethylene (PE) Plastic Fittings for Polyethylene (PE) Plastic Pipe and Tubing</u>	None	D3261-85	None	None
Butt Fusion Polyethylene (PE) Plastic Pipe Fittings, Schedule 40	K65.160-1971	* D2610-73	None	NSF 14
Butt Fusion Polyethylene (PE) Plastic Pipe Fittings, Schedule 80	K65.159-1971	* D2611-73	None	NSF 14
Plastic Insert Fittings for Polyethylene Plastic Pipe	None	D2609-74	L-F-001546-1968	NSF 14
** Polybutylene (PB) Plastic, Cold and Hot-Water Distribution Systems	None	* D3309-81b 85	None	NSF 14 See ASTM Appendix X2 for installa- tion procedures

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Polybutylene (PB) Plastic Pipe and Tubing Tubing for Cold Water Service				
** Polybutylene (PB) Plastic Pipe (SDR-PR)	None	* D2662-81 <u>83</u>	None	NSF 14 See ASTM D2774 for underground installation procedures
** Polybutylene (PB) Plastic Tubing	None	D2666-81a <u>83</u>	None	NSF 14 See ASTM D2774 for underground installation procedures
** Polybutylene (PB) Plastic Pipe (SDR-PR) Based on Outside Diameter	None	D3000-73 (1981)+ ±-	None	NSF 14 See ASTM D2774 for underground installation procedures
Note: Standards on materials do not apply that these materials may be used for a specific service. Materials shall be used to conform with the scope of the standards listed.				
Note: * Standard also listed by ANSI.				
Note: ± All provisions in this standard concerning potable water applications shall be mandatory to assure compliance with this Code.				
Non-Metallic Pipe and Fittings				
Type PSP Poly (Vinyl Chloride) Sewer Pipe and Fittings	None	* D3033-81 <u>85</u>	None	See ASTM D2321-74e for underground installation procedures <u>See ASTM D2855</u>
** Polyethylene (PE) Plastic Tubing	None	D2737-81+ <u>85</u>	None	NSF 14 See ASTM D2774 for underground installation procedures

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
** Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Hot-and Cold- Water Distribution Systems	None	D2846- 81 <u>82</u>	None	NSDF 14 See ASTM Appendix X2 for installation procedures
Socket-Type Chlorinated Poly Vinyl Chloride (CPVC) Plastic Pipe Fittings, Schedule 80	None	F439-77	None	NSF 14
** Poly (Vinyl Chloride) (PVC) Plastic Pipe, Schedules 40, 80 and 120	B72.7-1971	* D1785- 76 <u>81</u> <u>83</u> D2255-73	L-P-1035A-1974	NSF 14 See ASTM D2774 for underground installation procedures <u>See ASTM D2955</u>
<u>Making Solvent-Cemented joints with Poly (Vinyl Chloride) (PVC) Pipe and Fittings.</u>	<u>None</u>	<u>D2855-83</u>	<u>None</u>	<u>None</u>
** Poly (Vinyl Chloride) (PVC) Plastic Pipe (SDR-PR-Series)	None	D2241- 80 <u>81</u> <u>84</u>	None	NSF 14 See ASTM D2774 for underground installation procedures <u>See ASTM D2955</u>
** Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe (SDR-PR)	<u>None</u>	<u>F442-82</u>	<u>None</u>	<u>None</u>
** Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe, Schedules 40 and 80	None	F441- 77 <u>84</u>	None	NSF 14 See ASTM D2946 Appendix X2 for installation procedures

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
<u>Solvent Cements for Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe and Fittings</u>	<u>None</u>	<u>F493-85</u>	<u>None</u>	<u>None</u>
Socket-Type Polyvinyl Chloride (PVC) Plastic Pipe Fittings, Schedule 40	None	* D2466-78	None	NSF 14 <u>See ASTM D2855</u>
Socket-Type Polyvinyl Chloride (PVC) Plastic Pipe Fittings, Schedule 80	None	* D2467-76a	None	NSF 14 <u>See ASTM D2855</u>
Solvent Cements for Poly (Vinyl Chloride) (PVC) Plastic Pipe and Fittings	B72.16-1971	* D2564-80+ <u>-84</u>	None	NSF 14 <u>See ASTM D2855</u>
Primers for Solvent Cement Joints (PVC)	None	<u>F656-80 ± +</u>	None	None
Threaded Chlorinated Poly Vinyl Chloride (CPVC) Plastic Pipe Fittings, Schedule 80	None	F437-77 <u>82</u>	None	NSF 14
Threaded Polyvinyl Chloride (PVC) Plastic Pipe, Fittings, Schedule 80	K65.166-1971	* D2464-76	None	NSF 14
Bell-End Poly (Vinyl Chloride) (PVC) Pipe				
<u>** Solvent Cement Joint Sockets On Belled PVC Pressure Pipe</u>	B72.20-1971	* D2672-80+ <u>-85</u>	None	NSF 14 <u>See ASTM D2774</u> for underground installation procedures <u>See ASTM D2855</u>
Poly (Vinyl Chloride) (PVC) Plastic Drain Waste, Vent Pipe and Fittings	K65.56-1971	* D2665-8+ <u>+85</u>	L-P-320a-+966	NSF 14 <u>See ASTM Appendix XI</u> for installation procedures <u>See ASTM D2855</u>

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
<u>Drain, Waste, and Vent (DWV) Plastic Fittings Patterns</u>	None	<u>D3311-82</u>	None	None
Type PS-1 Poly (Vinyl Chloride) (PVC) Sewer Pipe & Fittings	None	* D3034-81 <u>85a</u>	None	See ASTM D2321-74e for underground installation procedures <u>See ASTM D2855</u>
<u>Type PS-46 Poly (Vinyl Chloride) (PVC) Plastic Gravity Flow Sewer Pipe and Fittings</u>	None	<u>F789-85</u>	None	None <u>See ASTM D2855</u>
<u>Underground Installation of Flexible Thermoplastic Sewer Pipe</u>	None	<u>D2321-83a</u>	None	None
Styrene-Rubber (SR) Plastic Drain Pipe and Fittings	None	* D2852-81	None	See ASTM D2321 for underground installation procedures
Note: Standards on materials do not imply that these materials may be used for a specific service. Materials shall be used to conform with the scope of the standards listed.				
Note: * Standard also listed by ANSI				
Note: + All provisions in this standard concerning potable water applications shall be mandatory to assure compliance with this code.				
Non-Metallic Pipe and Fittings-				
Solvent Cements for Styrene-Rubber (SR) Plastic Pipe and Fittings	None	* D3122-80	None	None
3.25-In. Outside Diameter Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, Vent Pipe and Fittings	None	<u>D2949-78e 85</u>	None	NSF 14 See ASTM Appendix XI for installation procedures <u>See ASTM D2855</u>

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
<u>Thermoplastic Accessible & Replaceable</u>				
<u>Plastic Tube & Tubular Fittings</u>	None	F409-81e	None	None
Poly (Vinyl Chloride) (PVC) Sewer Pipe and Fittings	None	D2729-88 <u>85</u>	None	Perforated pipe only See ASTM F 481 for leach field installation <u>See ASTM D2855</u>
Perforated Styrene Rubber (SR) Plastic Drain Pipe	None	D3298-81	None	See ASTM F 481 for leach field installation
Corrugated Polyethylene (PE) Tubing and Fittings	None	F405-77 <u>85</u>	None	See ASTM F 481 for leach field installation
<u>Pipe Joining <u>Jointing</u> Materials - Gaskets, and Supports</u>				
Calking, Lead Wool and Lead Pig	None	None	QQ-C-40 (2)-70	None
Compression Joints and Vitrified Clay Bell and Spigot Pipe	A106.6-1977	* C425-77	None	None
Joints for Plastic <u>Pressure</u> Pipes Using Flexible Elastomeric Seals	None	* D3139-77 <u>84</u> * D3212-81	None	None
Joints for Drain and Sewer Plastic Pipes Using Flexible Elastomeric Seals	None	* D3212-81	None	None
Fixture Setting Compound	None	None	TT-P-001536 (1968) revision of HHC 536a-1954	None
<u>Smoothwall Polyethylene (PE) Pipe for use in Drainage and Waste Disposal Absorption Fields</u>	None	F810-83	None	<u>See ASTM for leach field installation</u>

TABLE 62-03-03. 1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Hubless Soil Pipe Couplings				
Stainless Steel Couplings	None	None	None	CISPI 310-85
Cast Iron Couplings	None	A-126	None	None
Clamps	None	A-48	None	None
Gasket	None	C-564	None	None
Bolts	B-18.2.1	None	None	None
Nuts	B-18.2.2	None	None	None
Non-Metallic Gaskets for Pipe Flanges	B16.21-1972	None	None	None
Neoprene Rubber Gaskets for Hub Spigot				
Cast Iron Soil-Pipe and Fittings	None	C564-76	None	CISPI HSN 78 85
Pipe Hangers and Supports	None	None	YW-H-171d-1970	* MSS-SP-58-75
Rubber Gaskets for Cast Iron Soil-Pipe and Fittings	None	C564-76	None	None
Rubber Gasket Joints for Cast Iron Pressure Pipe and Fittings	A21.11-1979	None	None	* AWWA C111-80
Rubber Gaskets, Molded or Extruded, for Concrete Non-Pressure Sewer Pipe	None	* C443-78	HH-G-160b-1968	None
Rubber Rings for Asbestos Cement Pipe	J3.7-1971	D-1869-78-	none	none
Rubber Gaskets, Sheet	J7.2-1971	D-1330-66 (72) (1972)	None	None
Sealing Compound, Preformed Plastic, for Expansion Joints and Pipe Joints	None	None	SS-S-00210-(1965)	None
Sealing Compound, Sewer, Bituminous, Two- Component, Mineral-Filled, Cold Applied	None	None	SS-S-168 (2)+9-62	None

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Plumbing Appliances				
Dishwashing Machines, Commercial	A197.3-1973	None	Qo-D-431c (2)19-70	UL 921-1978 ASSE 1004-1967
Dishwashing Machines, Household	C33.69-1971 A197.1-1973	None	None	* UL 749-1978 ASSE-1006-1979-86
Note: Standards on materials do not imply that these materials may be used for a specific service. Materials shall be used to conform with the scope of the standards listed.				
Note: * Standard also listed by ANSI.				
Note: † All provisions in this standard concerning potable water applications shall be mandatory to assure compliance with this Code.				
Plumbing Appliances				
Drinking Water Coolers, Self Contained Mechanically Refrigerated	A112.11.1-1973	None	None	* ARL-1010-78 * UL399-1979
Food Waste Disposals, Commercial	None	None	None	ASSE 1009-1970
Food Waste Disposal Units, Household	C33.59-1970 A197.3-1973	None	QQ-G-001513-1968	* UL430-78 ASSE 1008-1979 86
Home Laundry Equipment	C33.13-1972 A197.2-1973	None	None	* UL 560-1978 * ASSE 1007-1979 86
Hot Water Dispenser Household Storage Type, Electrical	None	None	None	* ASSE 1023-1979
Tanks for Domestic Use, Porcelain Enameled	None	None	None	CS 115-60
Water Heaters, Automatic Storage Type	Z21.10.1a-1975	None	None	None
Water Heaters, Circulating Tank	Z21.10.3a-1975	None	None	None
Water Heaters, Electric Storage Tank	None	None	W-H-196j (j)-1971	*UL 174-1977
Water Heaters, Instantaneous	None	None	WW-H-191b-1970	None

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Water Heaters, Oil Fired Storage Type	None	None	None	*UL 732-1975
Water Heaters, Side Arm Type	Z21.10.1-1975	None	None	None
Plumbing Fixtures and Appurtenances				
Accessories (Land Use)	None	None	WW-P-541/3B-1981	None
Bathtubs	A112.19.1M-1979	None	WW-P-541/3B-1981	None
Plastic Bathtub Units	Z124.1-1980	None	WW-P-541/3B-1981	None
Drinking Fountains	A112.18.1M-1979	None	WW-P-541/6a-1971	None
Fittings, Plumbing Fixtures, Finished and Rough Brass	A112.18.1M-1979 (R1974)	None	WW-P-541/ALL-1981	None
Hand Held Showers, Performance Requirements	None	None	None	*ASSE 1014-1979
Individual Shower Control Valves, Anti-Scald Type	None	None	None	*ASSE 1016-1979
Lavatories	None	None	WW-P-541/4B-1981	None
Lavatory, Cultured Marble	Z124.3-1980 86	None	None	CMI LS-2
Lavatories, Plastic	Z124.3-1980 86	None	None	None
Plumbing Fixtures, General Specification	None	None	WW-P-541-GEN-1981	None
Plumbing Fixtures, Enameled Cast Iron	A112.19.1M-1979 87	None	WW-P-541/3B [±] _± 5B-1981	None
Plumbing Fixtures, Stainless Steel	A112.193M-1974 87	None	WW-P-541/5B-1981	None
Plumbing Fixtures, Vitreous China	A112.19.2-1982	None	WW-P-541/1B, 2B, 4B, 6B, 1981	None
Plumbing Fixtures, Enameled Steel	A112.19.4M-1977 84	None	WW-P-541/3B, 4B 6B-1981	None
Pressurized Flushing Devices Plumbing				
<u>Fixtures (Flushometers)</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>ASSE 1037-86</u>
Shower Baths, Heads and Water Control Valves	A112.181M-1979	None	WW-P-541/7B19-81	None

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Plastic Shower Receptors and Shower Stalls	Z124.2-1980	None	None	None
Sinks, Kitchen and Service, and Laundry Tub	A112.19.2M-1982 A112.19.3-1976	None	WW-P-541/5B-1981	None
Supports for Off-the-Floor Plumbing Fixtures for Public Use	A112.6.1-1979	None	None	None
Thermostatic Mixing Valves, Self Actuated for Primary Domestic Use	None	None	None	*ASSE 1017-1979 86
Urinals	A112.19.2M-1982	None	WW-P-541/2B-1981	None
Water Closets	A112.19-2M-1982	None	WW-P-541/1B-1981	None
<u>Water Closet Plastic Bowls and Tanks</u>	<u>Z124.4-1986</u>	<u>None</u>	<u>None</u>	<u>None</u>
Backflow Preventors				
Air Gap Standards	A112.1.2-1942 (R1979)	None	None	None
Air Gap Drains for Domestic Dishwashers	None	None	None	ASSE 1021-1976
Vacuum Breakers, Anti-Siphon	A112.1.1-1971	None	None	BSR/ASSE 1001-1980
Vacuum Breakers, Hose Connection	A112.1.3-1976	None	None	*ASSE 1011-1981
Double Check with Atmospheric Vent	None	None	None	ASSE 1012-1978
Reduced Pressure Principle Back Pressure, Backflow Preventer	None	None	None	ASSE 1013-1980
Double Check Valve, Back Pressure, Backflow Assembly	None	None	None	ASSE 1015-1980
Wall Hydrants, Freezeless, Automatic Draining Anti-Backflow Type	None	None	None	*ASSE 1019-1978

Note: - Standards on materials do not imply that these materials may be used for a specific service. Materials shall be used to conform with the scope of the standards listed.

Note: * Standard also listed by ANSI.

Note: + All provisions in this standard concerning potable water applications shall be mandatory to assure compliance with this Code.

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Backflow Preventors--				
Vacuum Breakers, Pressure Type	A112.1.7-1976	None	None	BSR/ASSE 1020-1981
Diverters for Plumbing Faucets with Hose Spray Anti-Siphon Type, Residential Application	None	None	None	*ASSE 1025-1978
Miscellaneous and Installation Standards				
Asbestos Cement Pressure Pipe, Installation	None	None	None	*AWWA C603-78
Arrestors, Water Hammer	A112.26.2-1969 (R-1975)	None	None	ASSE 1010-1967 <u>82</u>
Balloocks, Water Closet, Flush Tank	None	None	None	*ASSE 1002-1979 <u>86</u>
Enamel, Coal-Tar (Protective Coating)	None	None	None	*AWWA C203-78 *AWWA C210-78
Chlorinated Polyethylene (CPE) Sheeting for Concealed Water Containment Membrane	None	D 4068-81	None	None
Clamps, Hose	None	None	WW-C-440B (a)-1969	None
Coating, Pipe, Epoxy, Fusion Bond	None	None	None	*AWWA C213-79
Coating, Pipe, Thermoplastic Resin or Thermosetting, Epoxy	None	None	L-CS30B-1970	None
Connector, Water, Flexible Copper	None	None	None	IAPMO PS-14-81
Copper, Sheet and Strip for Building Construction	None	B370-77	None	None
Clay Pipe, Installation	A106.2-1977	* C12-77	None	None
Clay Pipe, Testing	A106.5-1978	* C301-78a	None	None
Drain, Floor	A112.2.1-1968 (R1974)	None	None	None
Drain for Prefabricated and Precast Showers	None	None	None	IAPMO PS-4-77

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Drain, Roof	A112.21.2-1971	None	None	None
Interceptors, Grease	None	None	None	PDI G 101
Laboratory Faucet Vacuum Breakers	None	None	None	ASSE 1035-81
Lead, Sheet, Grade A	None	None	QQ-L-2011(2)-1970	None
Installation of Thermoplastic Pipe and Corrugated Tubing in Septic Tank Leach Fields	None	F481-76 (1981)	None	None
Plugs, Metallic Cleanout	A112.36.2-1975	None	None	None
Relief Valves, Automatic	Z21.22-1979	None	None	None
Recommended Practice for Making Solvent Cemented Joints with Polyvinyl Chloride (PVC) Plastic Pipe and Fittings	None	* D2855-78	None	None
Reducing Valves, Water Pressure for Domestic Water Supply System	A112.26.2-1975	None	None	BSR/ASSE 1003-1981 IAPMO PS-15-77
Safe Handling of Solvent Cements Used for Joining Thermoplastic Pipe and Fittings	None	F402-80	None	None
Solder, Soft	None	None	QQ-S-571d-1963	None
Septic Tank, metal, bituminous-coated	A162.1-1970	None	None	UL70-1974
Septic Tank, Steel	None	None	None	CSI77-62
Tape, Pipe Coating, Pressure Sensitive Polyethylene	None	None	L-T-0075 (1)-1966	None
Tee, Diversion and Twin Waste Elbow	None	None	None	IAPMO PS-9-77
Thermoplastic Accessible and Replaceable Plastic Tube and Tubular Fittings	None	* F409-81	None	NSF 14

TABLE 62-03-03.1
STANDARDS FOR APPROVED PLUMBING MATERIALS AND EQUIPMENT

DESCRIPTION	ANSI	ASTM	FS	OTHER
Underground Installation of Flexible Thermoplastic Sewer Pipe	None	* D2321-74e (1980)	None	None
Underground Installation of Thermoplastic Pressure Piping	None	* D2774-72 (78)	None	None
Trap Seal Primer Valves, <u>Water Distribution Type</u>	None	None	None	* ASSE 1010-1970 1044-86
Valve, Backwater	A112.14.1-1975	None	None	IAPMO PS-8-77 <u>CSA B181.1</u> <u>CSA B181.2</u>
Valve, Drain, Water Heater	None	None	None	ASSE 1005-1967 <u>B6</u>

Note: Standards on materials do not imply that these materials may be used for a specific service. Materials shall be used to conform with the scope of the standards listed.

Note: * Standard also listed by ANSI.

Note: ** Potable water application for plastic pipe.

Note: *** K, L and M Copper tubing are only tubing acceptable for potable water application.

Note: ± + All provisions in this standard concerning potable water applications shall be mandatory to assure compliance with this Code.

62-03-04-02. Types of joints for piping materials.

1. Caulked.

- a. Cast iron soil pipe. Every lead caulked joint for cast iron hub and spigot soil pipe shall be firmly packed with oakum or hemp and filled with molten lead not less than one inch [2.54 centimeters] deep and not to extend more than one-eighth inch [3.18 millimeters] below the rim of the hub. No paint, varnish, or other coatings shall be permitted on the jointing material until after the joint has been tested and approved. Lead shall be run in one pouring and shall be caulked tight.
- b. Cast iron water pipe. Every lead caulked joint for cast iron bell and spigot water pipe shall be firmly packed with clean, sound asbestos rope or treated paper rope. The remaining space in the hub shall be filled with molten lead according to the following schedule:

<u>Pipe Size</u>	<u>Depth of Lead</u>
Up to twenty inches	Two and one-fourth inches
Twenty-four, thirty, thirty-six inches	Two and one-half inches
Larger than thirty-six inches	Three inches

Lead shall be run in one pouring and shall be caulked tight.

2. Threaded. Every threaded joint shall conform to the American National Taper Pipe Thread, ANSI B2.1-1960. All burrs shall be removed. Pipe ends shall be reamed or filed out to size of bore, and all chips shall be removed. Pipe joint compound shall be used only on male threads.
3. Wiped. Every joint in lead pipe or fittings, or between lead pipe or fittings and brass or copper pipe, ferrules, solder nipples, or traps, shall be full-wiped joints. Wiped joints shall have an exposed surface on each side of a joint not less than three-fourths inch [19.05 millimeters] and at least as thick as the material being jointed. Wall or floor flange lead-wiped joints shall be made by using a lead ring or flange placed behind the joints at wall or floor. Joints between lead pipe and cast iron, steel, or wrought iron shall be made by means of a caulking ferrule, soldering nipple, or bushing.
4. Soldered. Joints in copper tubing shall be made by the appropriate use of approved brass or copper fittings. The surface to be joined by soldering shall be cleaned bright by manual or mechanical means. The joints shall be properly fluxed with an approved noncorrosive paste type flux and made

up with approved solder. Joints for potable water used in copper, brass, or wrought copper fittings must be made with a solder and flux containing not more than 0.2 percent lead. Soldered joints shall not be used for tube installed underground.

5. Flared. Every flared joint for annealed-temper copper water tube shall be made with fittings meeting approved standards. The tube shall be reamed and then expanded with a proper flaring tool.
 6. Hot poured. ~~Hot poured compound for clay or concrete sewer pipe or other materials shall not be water absorbent and when poured against a dry surface shall have a bond of not less than one hundred pounds {45.36 kilograms} per square inch {6.45 square centimeters} in shear. All surfaces of the joint shall be cleaned and dried before pouring. If wet surfaces are unavoidable, a suitable primer shall be applied. The compound shall not soften sufficiently to destroy the effectiveness of the joint when subjected to a temperature of one hundred sixty degrees Fahrenheit {71.11 degrees Celsius} nor be soluble in any of the waste carried by the drainage system. Approximately twenty-five percent of the joint space at the base of the socket shall be filled with jute or hemp. A pouring collar, rope, or other device shall be used to hold the hot compound during pouring. Each joint shall be poured in one operation until the joint is filled. Joints shall not be tested until one hour after pouring.~~
 7. Precast. Every precast collar shall be formed in both the spigot and bell of the pipe in advance of use. Collar surfaces shall be conical with side slopes of three degrees with the axis of the pipe and the length shall be equal to the depth of the socket. Prior to making joint contact, surfaces shall be cleaned and coated with solvents and adhesives as recommended in the standard. When the spigot end is inserted in the collar, it shall bind before contacting the base of the socket. Material shall be inert and resistant to both acids and alkalies.
- ~~8.~~ 7. Brazed joints and extracted mechanical joints.
- a. Brazed joints must be made by first cleaning the surface to be joined down to the base metal, applying flux approved for such joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.
 - b. An extracted mechanical joint may be made in copper tube. It must be produced with an appropriate tool and joined by brazing. To prevent the branch tube from being inserted beyond the depth of the extracted joint, depth stops must

be provided. The brazed joint must be made according to subdivision a.

- ~~9-~~ 8. **Cement.** Except for repairs and connections to existing lines constructed with such joints, cement mortar joints are prohibited. Where permitted, cement mortar joints shall be made in the following manner: A layer of jute or hemp shall be inserted into the base of the annular joint space and packed tightly to prevent mortar from entering the interior of the pipe or fitting. Not more than twenty-five percent of the annular space shall be used for jute or hemp. The remaining space shall be filled in one continuous operation with a thoroughly mixed mortar composed of one part cement and two parts sand, with only sufficient water to make the mixture workable by hand. Additional mortar of the same composition shall then be applied to form a one to one slope with the barrel of the pipe. The bell or hub of the pipe shall be left exposed and when necessary the interior of the pipe shall be swabbed to remove any mortar or other material which may have found its way into such pipe.
- ~~10-~~ 9. **Burned lead (welded).** Every burned (welded) joint shall be made in such manner that the two or more sections to be joined shall be uniformly fused together into one continuous piece. The thickness of the weld shall be at least as thick as the lead being joined.
- ~~11-~~ 10. **Mechanical (flexible or slip joint).**
- a. **Asbestos cement pipe.** Every joint in asbestos cement pipe shall be made with a sleeve coupling of the same composition as the pipe or an approved material meeting these standards, sealed with rubber rings except that asbestos cement perforated pipe shall be made with a sleeve coupling which fits on the spigot end of the pipe.
 - b. **Cast iron pipe.**
 - (1) **Mechanical joint.** Every mechanical joint in cast iron pipe shall be made with a flanged collar, rubber ring gasket, and appropriate number of securing bolts.
 - (2) **Hubless pipe.** Joints for hubless cast iron soil pipe and fittings shall be made with an approved elastomeric sealing sleeve and stainless steel clamp, clamping screw, and housing.
 - (3) **Bell and spigot pipe.** Joints for bell and spigot cast iron soil pipe and fittings may be made by caulking with lead and oakum or by use of a compression gasket that is compressed when the spigot is inserted into the hub of the pipe.

- ~~c.~~ b. Clay pipe. Flexible joints between lengths of clay pipe may be made using approved resilient materials both on the spigot end and in the bell end of the pipe.
- ~~d.~~ c. Concrete pipe. Flexible joints between lengths of concrete pipe may be made using approved elastomeric materials both on the spigot end and in the bell end of the pipe. For plain end pipe, see American society for testing and materials C-594; for bell and spigot, see American society for testing and materials C-425.
- ~~+2.~~ 11. Tapered couplings. Every joint in bituminized fiber pipe shall be made with tapered type couplings of the same material as the pipe. Joints between bituminized fiber pipe and metal pipe shall be made by means of an adapter coupling caulked as required in subsection 1.
- ~~+3.~~ Welded joints. Joints to be welded shall be prepared by approved procedure, cleaned free from paint, oil, rust, scale, or other objectionable material and welded by welders who qualify according to section 6 of the code for pressure piping, American national standards institute B31.1-1955, with addenda B31.1a-1965.
- ~~+4.~~ 12. Plastic.
 - a. Every joint in plastic piping shall be made with approved fittings by either solvent welded solvent-cemented or fusion welded heat-joined connections, approved elastomeric gaskets, metal clamps and screws of corrosion-resistant materials, approved insert fittings, approved mechanical fittings, or threaded joints according to approved standards. The commingling of acrylonitrile-butadiene-styrene and polyvinyl chloride material is prohibited.
 - b. An approved purple color primer and solvent cement not purple in color shall be used in joining P.V.C. pipe and fittings. Solvent weld Solvent-cemented plastic joints may not be installed when the temperature in the installation area is less than forty degrees Fahrenheit [4.4 degrees Celsius] or more than ninety degrees Fahrenheit [32.22 degrees Celsius].
- ~~+5.~~ 13. Slip. Every slip joint shall be made using approved packing or gasket material, or approved ground joint brass compression rings. Ground joint brass connections which allow adjustment of tubing but provide a rigid joint when made up shall not be considered as slip joints.
- ~~+6.~~ 14. Expansion. Every expansion joint shall be of approved type and its material shall conform with the type of piping in which it is installed.

- ~~17.~~ 15. Split couplings. Couplings made in two or more parts and designed for use with plain end or grooved pipe or approved fittings and with compression gaskets may be used for hot and cold water piping and conductors and leaders. Each manufacturer must have the manufacturer's complete joining assembly approved for the intended use by one of the organizations listed in chapter 62-03-03 or by the administrative authority.

History: Amended effective April 1, 1984; July 1, 1985; January 1, 1988; December 1, 1988; October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-04-03. Types of joints between different piping materials.

1. Vitrified clay to other material. Every joint between vitrified clay and other piping materials should be specially formed to vitrified clay and resilient material to meet the test conditions of American society for testing and materials C-425. All adapters must meet requirements of positive jointing and smooth flow line.
2. ~~Asbestos cement pipe to other materials.~~
 - a. ~~To metal pipe. Joints between asbestos cement pipe and metal pipes shall be made by means of an adapter coupling caulked as required in subsection 1 of section 62-03-04-02 or by means of an acceptable prefabricated sealing ring or sleeve as specifically approved by the administrative authority.~~
 - b. ~~To clay or concrete pipe. Joints between asbestos cement pipe and clay concrete pipe shall be made by means of an adapter coupling using approved rubber or elastomeric rings or by a preformed bituminous ring as approved by the administrative authority.~~
 - c. ~~To plastic pipe. Joints between asbestos cement pipe and plastic pipe shall be made by means of an adapter coupling with approved rubber or elastomeric rings or with an approved elastomeric sealing sleeve and stainless steel clamp, clamping screw, and housing.~~
3. Cast iron to vitrified clay. Every joint between cast iron piping and vitrified clay piping shall be made either of hot poured bitumastic compound or by a preformed elastomeric ring. This ring shall, after ramming, completely fill the annular space between the cast iron spigot and the vitrified clay hub.

- ~~4-~~ 3. Threaded pipe to cast iron. Every joint between wrought iron, steel, or brass, and cast iron pipe shall be either caulked or threaded or shall be made with approved adapter fittings.
- ~~5-~~ 4. Lead to cast iron, wrought iron, or steel. Every joint between lead and cast iron, wrought iron, or steel pipe shall be made by means of wiped joints to a caulking ferrule, soldering nipple, bushing, or by means of a mechanical adapter.
- ~~6-~~ 5. Cast iron to copper tube. Every joint between cast iron and copper tube shall be made by using an approved brass or copper caulking ferrule and properly soldering the copper tube to the ferrule.
- ~~7-~~ 6. Copper tube to threaded pipe joints. Every joint from copper tube to threaded pipe shall be made by the use of brass or copper converter fittings. The joint between the copper pipe and the fitting shall be properly soldered, and the connection between the threaded pipe and the fitting shall be made with a standard pipe size screw joint.
- ~~8-~~ 7. Special joints for drainage piping. Different types of drainage piping materials shall be jointed either by adapter fittings or by means of an acceptable prefabricated sealing ring or sleeve as specifically approved by the administrative authority.
- ~~9-~~ 8. Acrylonitrile-butadiene-styrene or polyvinyl plastic drainage, waste, and venting to other material.
 - a. Threaded joints. Acrylonitrile-butadiene-styrene or polyvinyl drainage, waste, and venting joints when threaded shall use the proper male or female threaded adapter. Use only approved thread tape or lubricant seal or other approved material as recommended by the manufacturer.

Threaded joints shall not be overtightened. After hand tightening the joint, one-half to one full turn with a strap wrench will be sufficient.
 - b. Cast iron hub joints. Joints may be made by caulking with lead and oakum or by use of a compression gasket that is compressed when the plastic pipe is inserted into the cast iron hub end of the pipe. No adapters are required for this connection.
 - c. Cast iron spigot ends or schedule 40 steel pipe-copper drainage, waste, and venting tube. Joints where the outside diameter of the two pipes or fittings to be joined are the same may be joined with an approved elastomeric

sealing sleeve and stainless steel clamp, clamping screw, and housing.

History: Amended effective October 1, 1989.
General Authority: NDCC 43-18-09
Law Implemented: NDCC 43-18-09

62-03-04-04. Connections between drainage piping and certain fixtures. Every connection between drainage pipes and water closets, floor outlet service sinks, pedestal urinals, and earthenware trap standards, or any other fixture with floor outlet shall be made by means of brass, wrought copper, hard lead, or iron or plastic flanges, caulked, soldered, or screwed to the drainage pipe. The connection shall be bolted, with an approved gasket or washer or setting compound between the earthenware and the connection. The floor flange shall be fastened to a structurally firm base. The use of commercial putty or plaster is prohibited.

1. Every connection between drainage piping and floor outlet plumbing fixtures must be made by means of an approved flange which is attached to the drainage piping in accordance with the provisions of this chapter. The floor flange must be set on and securely anchored to the building structure.
2. Every connection between drainage piping, and wall hung water closets must be made by means of an approved extension nipple or horn adapter.
3. The connection must be bolted to the flange or carrier using corrosion-resistant bolts, screws, or assemblies recommended by the manufacturer.

History: Amended effective October 1, 1989.
General Authority: NDCC 43-18-09
Law Implemented: NDCC 43-18-09

62-03-04-05. Waterproofing of openings. Joints at the roof, around vent pipes, shall be made watertight by the use of ~~lead, copper, aluminum, plastic, or other approved flashing~~ or flashing material. Exterior wall openings shall be made watertight.

History: Amended effective October 1, 1989.
General Authority: NDCC 43-18-09
Law Implemented: NDCC 43-18-09

62-03-05-03. Size of fixture traps. Fixture trap size (nominal diameter) shall be sufficient to drain the fixture rapidly and in no case less than given in the table contained in this section. No trap shall be larger than the drainage pipe into which it discharges. Integral traps shall conform to appropriate standards.

SIZE OF NONINTEGRAL TRAPS FOR DIFFERENT
TYPE PLUMBING FIXTURES

Plumbing Fixture	Trap size in inches
Bathtub (with or without overhead shower)	1-1/2
Bidet	1-1/4
Clothes washer	2
Combination sink and wash (laundry) tray	1-1/2
Combination sink and wash (laundry) tray with food-waste grinder unit	1-1/2 *
Combination kitchen sink, domestic, dishwasher, and food-waste grinder	≥ 1-1/2 *
Dental unit or cuspidor	1-1/4
Dental lavatory	1-1/4
Drinking fountain	1-1/4
Dishwasher, commercial	2
Dishwasher, domestic (nonintegral trap)	1-1/2
Floor drain	2
Food-waste grinder	1-1/2
Kitchen sink, domestic, with food-waste grinder unit	1-1/2
Kitchen sink, domestic	1-1/2
Kitchen sink, domestic, with dishwasher	1-1/2
Lavatory, common	1-1/4
Lavatory (barber shop, beauty parlor, or surgeon's)	1-1/2
Lavatory, multiple type (wash fountain or wash sink)	1-1/2
Laundry tray (1 or 2 compartments)	1-1/2
Shower stall or drain	2
Sink (surgeon's)	1-1/2
Sink (flushing rim type, flush valve supplied)	3
Sink (service type with floor outlet trap standard)	3
Sink (service trap with P trap)	2
Sink, commercial (pot, scullery, or similar type)	2
Sink, commercial (with food grinder unit)	2

* Separate trap required for wash tray and separate trap required for sink compartment with food-waste grinder unit.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-05-04. General requirements for traps.

1. Design of traps. Fixture traps shall be self-scouring and shall have no interior partitions except where such traps are integral with the fixture. Slip joints or couplings may be

used on the trap inlet or within the trap seal of the trap if a metal-to-metal ground joint is used.

Each trap, except that for an interceptor or similar device, shall be self-cleaning. Traps for bathtubs, showers, lavatories, sinks, laundry tubs, floor drains, hoppers, urinals, drinking fountains, dental units, and similar fixtures shall be of standard design and weight and shall be of lead, cast iron, cast brass, or other approved materials. An exposed and readily accessible drawn brass tubing trap, not less than Brown and Sharpe seventeen-gauge [.045 inches - 1.14 millimeters] may be used on fixtures discharging domestic sewage but shall exclude urinals. Each tubing trap shall have the gauge of the tubing in addition to the manufacturer's name stamped legible in the metal of the trap. Every trap shall have a smooth and uniform interior waterway.

2. Trap seals. Each fixture trap shall have a liquid seal of not less than two inches [5.08 centimeters] and not more than four inches [10.16 centimeters], except where for special conditions, a deeper seal may be required by the administrative authority. This requirement does not apply to interceptors.
3. Trap setting and protection. Traps shall be set level with respect to their water seals and, where necessary, shall be protected from freezing.
4. Building traps. Building (house) traps shall not be installed except where required by the administrative authority. Each building trap when installed shall be provided with a cleanout and with a relieving vent or fresh air intake on the inlet side of the trap which need not be larger than one-half the diameter of the drain to which it connects. Such relieving vent or fresh air intake shall be carried above grade and terminate in a screened outlet located outside the building.
5. Prohibited traps. The following type traps are prohibited:
 - a. Traps which depend upon moving parts to maintain their seal.
 - b. Bell traps.
 - c. Crown vented traps.
 - d. Separate fixture traps which depend on interior partitions for their seal.
 - e. "S" traps.

- f. ~~Drum traps. Hair interceptors, precious metal interceptors, and similar appurtenances shall be permitted as per other sections of this article.~~

Note: Hair interceptors, precious metal interceptors, and similar appurtenances shall be permitted as per other sections of this article.

History: Amended effective July 1, 1985; October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-05-04.1. Acid-resisting traps. Where a vitrified-clay or other brittleware, acid-resisting trap is installed underground, it must be embedded in concrete extending six inches [15.24 centimeters] beyond the bottom and sides of the trap.

History: Effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09.

62-03-05-05. Drainage pipe cleanouts.

1. Location. Cleanouts shall be not more than seventy-five feet [22.86 meters] apart in horizontal drainage lines of four inch [10.16 centimeter] nominal diameter or less and not more than one hundred feet [30.48 meters] apart for larger pipes.
2. Underground drainage. Cleanouts, when installed on an underground drain, shall be extended vertically to or above the finished grade level or the cleanout may be extended outside the building when found necessary by the administrative authority.
3. Change of direction. Cleanouts shall be installed at each change of direction of the drainage system greater than forty-five degrees, except no more than one shall be required in every forty feet [12.19 meters] of run.
4. Concealed piping. Cleanouts on concealed piping shall be extended through and terminate flush with the finished wall or floor; or pits or chases may be left in the wall or floor, provided they are of sufficient size to permit removal of the cleanout plug and proper cleaning of the system.
5. Base of stacks.
 - a. A cleanout shall be provided at or near the foot of each vertical waste or soil stack. For buildings with a floor slab, or with less than eighteen-inch [45.72-centimeter] crawl space under the floor or where a stack cleanout is

not easily accessible, the following shall be provided in lieu of a cleanout at the base of the stack. The building drain shall be extended to the outside of the building and terminated in an accessible cleanout or an accessible cleanout may be installed in the building drain downstream from the stack not more than three feet [91.44 centimeters] outside the building wall.

- b. Rain leaders and conductors connected to a building storm sewer shall have a cleanout installed at the base of the outside leader or inside conductor before it connects to the horizontal drain.
6. **Building drain and building sewer junction.** There shall be a cleanout near the junction of the building drain and building sewer. This cleanout may be either inside or outside the building wall provided it is brought up to finish grade or to the basement floor level.
7. **Direction of flow.** Every cleanout shall be installed so that the cleanout opens in the direction of the flow of the drainage line or at right angles thereto.
8. **Connections to cleanouts prohibited.** Cleanout openings shall not be used for the installation of new fixtures or floor drains except where approved in writing by the administrative authority and where another cleanout of equal access and capacity is provided.
9. **Cleanout size.** Cleanouts shall be of the same nominal size as the pipes up to four inches [10.16 centimeters] and not less than four inches [10.16 centimeters] for ~~larger~~ piping up to six inches [15.24 centimeters], and not less than six inches [15.24 centimeters] for larger piping.
10. **Manholes for large pipes.** For underground piping over ten inches [25.4 centimeters], manholes shall be provided and located at every change of size, alignment, grade, or elevation and at intervals of not more than three hundred feet [91.44 meters] except when total length is less than one hundred fifty feet [45.72 meters] cleanouts may be provided by seventy-five-foot [22.86-meter] intervals. Manholes shall conform to current standards or as approved by the administrative authority.
11. **Cleanout clearances.** Cleanouts on three-inch [7.62-centimeter] or larger pipes shall be so installed that there is a clearance of not less than eighteen inches [45.72 centimeters] for the purpose of rodding. Cleanouts smaller than three inches [7.62 centimeters] shall be so installed that there is a twelve-inch [30.48-centimeter] clearance for rodding.

12. Cleanouts to be kept uncovered. Cleanout plugs shall not be covered with cement, plaster, or any other permanent finishing material. Where it is necessary to conceal a cleanout plug, a covering plate or access door shall be provided which will permit ready access to the plug.
13. Cleanout equivalent. Where the piping is concealed, a fixture trap or a fixture with integral trap, readily removable without disturbing concealed roughing work, may be accepted as a cleanout equivalent.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

~~62-03-05-06. Acid-resisting traps. Where a vitrified clay or other brittleware, acid-resisting trap is installed underground, it shall be embedded in concrete extending six inches [15.24 centimeters] beyond the bottom and sides of the trap~~ Repealed effective October 1, 1989.

General Authority: ~~NDCC 43-18-09~~

Law Implemented: ~~NDCC 43-18-09~~

62-03-06-02. Grease interceptors.

1. Commercial buildings. A grease interceptor shall not be required in restaurants, hotel kitchens, bars, factory cafeterias or restaurants, clubs, or other similar establishments (except in special cases as may be determined by the administrative authority).

Food-waste grinders shall not discharge to the building drainage system through a grease interceptor.

2. Water-cooled grease interceptors. The installation of water-cooled grease interceptors shall be prohibited.
3. Grease interceptors capacity. Grease interceptors, if installed, shall have a grease retention capacity of not less than two pounds [90.72 centigrams] for each gallon [3.79 liters] per minute.

<u>Total Number of Fixtures</u>	<u>Grease Interceptor Capacity</u>	
	<u>Maximum Rate of Flow per Minute, Gallons</u>	<u>Grease Retention Capacity Pounds</u>
<u>1</u>	<u>20</u>	<u>40</u>
<u>2</u>	<u>25</u>	<u>50</u>
<u>3</u>	<u>35</u>	<u>70</u>
<u>4</u>	<u>50</u>	<u>100</u>

Note: Multiple compartments sinks may be considered one fixture.

4. Rate of flow controls. Grease interceptors shall be equipped with devices to control the rate of waterflow through the interceptors so that it does not exceed the rated flow of the interceptors.
5. Interceptors not required. A grease interceptor is not required for individual dwelling units or any private living quarters.
6. Trap equivalent. Each fixture discharging into a grease interceptor must be individually trapped and vented in an approved manner. An approved type grease interceptor may be used as a fixture trap for a single fixture when the horizontal distance between the fixture outlet and the grease interceptor does not exceed four feet [1.22 meters] and the vertical tailpipe or drain does not exceed two and one-half feet [.762 millimeters].

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-07-09. Flushing devices for water closets and urinals.

1. Flushing devices required. Each water closet, urinal, clinic sink, or other plumbing fixture which depends on trap siphonage to discharge its waste contents to the drainage system to which it is connected shall be provided with a flushometer valve, ~~flush~~ flushometer tank, gravity flush tank, or similar device designed and installed so as to supply water in sufficient quantity and rate of flow to flush to the sewer the contents of the fixture to which it is connected to cleanse the fixture and refill the fixture trap.
2. Separate for each fixture. A flushing device shall serve only one fixture except that when otherwise approved by the administrative authority a single flush tank may be used to flush more than one urinal provided that the flushing cycle is controlled automatically and that each urinal or section thereof is thoroughly flushed.
3. Flushometer valves. Flushometers shall be installed so that they will be readily accessible for repair. Flushometer valves shall not be used where the water pressure is insufficient to properly operate them. When the valve is operated, it shall complete the cycle of operation automatically, opening fully and closing positively under the waterline pressure. Each flushometer shall be provided with a means for regulating the flow through it.

4. **Water supply for flush tanks.** An adequate quantity of water shall be provided to flush and clean the fixture served. The water supply to flush tanks equipped for manual flushing shall be controlled by a float valve or other automatic device designed to refill the tank after each discharge and to completely shut off the water flow to the tank when the tank is filled to operational capacity. Water closets having any portion of the tank below the flood level rim of the closet bowl shall have a ball cock installed within a sheath or in a separate and isolated compartment of the tank, both to have tattletales to discharge onto the floor in case of failure. Provision shall be made to automatically supply water to the fixture so as to refill the trap seal after each flushing. The water supply to flush tanks equipped for automatic flushing shall be controlled by a suitable timing device.
5. **Flush valves in flush tanks.** Flush valves seats in tanks for flushing water closets shall be at least one inch [2.54 centimeters] above the flood level rim of the bowl connected thereto, except in approved water closet and flush tank combinations designed so that when the tank is flushed and the fixture is clogged or partially clogged, the flush valve will close tightly so that water will not spill continuously over the rim of the bowl or backflow from the bowl to the tank.
6. **Overflows in flush tanks.** Flush tanks shall be provided with overflows discharging to the water closet or urinal connected thereto and of sufficient size to prevent flooding the tank at the maximum rate at which the tanks are supplied with water.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-07-12. Bathtubs.

1. Bathtubs must have waste outlets and overflows at least one and one-half inches [38.1 millimeters] in diameter and the waste outlet must be equipped with a suitable stopper located at the tub outlet.
2. Bathtubs with overhead showers in buildings other than single dwelling units must have nonslip bottom surfaces.
3. Whirlpool bathtubs.
 - a. Access panel or door of sufficient size must be installed to provide access to the pump for repair or replacement, or both.
 - b. The circulation pump must be accessibly located above the crown weir of the trap. The pump drain line must be

properly sloped to drain the voute after fixture use.
Circulation piping must be installed to be self-draining.

History: Amended effective July 1, 1985; October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-07-16. Floor drains.

1. Floor drain trap and strainer. Floor drains shall have a minimum water seal of three inches [7.62 centimeters] and shall be provided with removable strainers. The open area of strainer shall be at least two-thirds of the cross-section area of the drain line to which it connects. Floor drain trap seals subject to evaporation shall have a water seal of six inches [15.24 centimeters] or shall be fed from an approved plumbing fixture or by means of an approved automatic priming device or by any other arrangement that is approved by the administrative authority.
2. Size of floor drains. Floor drains shall be of a size to serve efficiently the purpose for which it is intended. Minimum size trap is two inches [5.08 centimeters].
3. Floor drains required. Floor drains must be installed in public toilet rooms, commercial kitchens, and public laundry rooms of multifamily dwellings and commercial buildings. When in the opinion of the administrative authority, floor drains shall be installed in basements, utility rooms, ~~commercial kitchens,~~ food processing establishments, ~~public restrooms,~~ and in other locations where they may help promote the cleanliness of the building. Room floor must be pitched toward floor drain. Floor drains may not be installed in walk-in coolers or freezers.
4. Basement floor drains. Basement floor drains shall not be less than two inches [5.08 centimeters] in size and shall be connected at least five feet [1.52 meters] from the base of any soil or waste stack unless vented.

History: Amended effective November 1, 1979; October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-07-21. Automatic clothes washers. A water supply line to an automatic clothes washer shall be protected against backflow by the use of an airgap or backflow preventer. The discharge from such a machine shall be through an air break or airgap. (See section 62-03-09-04(6).)

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09
Law Implemented: NDCC 43-18-09

62-03-07-25. Facilities for the handicapped.

1. In new constructed buildings and facilities used by the public, toilet rooms shall be made accessible to, and usable by, the physically handicapped.
2. It is essential that an appropriate number (note 5) of toilet rooms, in accordance with the nature and use of a specific building or facility, be made accessible to, and usable by, the physically handicapped.
3. Toilet rooms shall have space to allow traffic of individuals in wheelchairs.
4. Toilet rooms shall have at least one toilet stall that:
 - a. Is three feet [91.44 centimeters] wide.
 - b. Is at least four feet eight inches [142.24 centimeters], preferably five feet [152.4 centimeters] deep.
 - c. Has a door (where doors are used) that is thirty-two inches [81.28 centimeters] wide and swings out.
 - d. Has handrails on each side, thirty-three inches [83.82 centimeters] high and parallel to the floor, one and one-half inches [38.1 millimeters] in outside diameter, with one and one-half inches [38.1 millimeters] clearance between rail and wall, and fastened securely at ends and center.
 - e. Has a water closet with the seat eighteen to twenty inches [45.72 to 50.8 centimeters] from the floor (standard height bowls with seat that raise bowl height are permissible).

Note: The design and mounting of the water closet is of considerable importance. A wall-mounted water closet with a narrow understructure that recedes sharply is most desirable. If a floor-mounted water closet must be used, it should not have a front that is wide and perpendicular to the floor at the front of the seat. The bowl should be shallow at the front of the seat and turn backward more than downward to allow the individual in a wheelchair to get close to the water closet with the seat of the wheelchair.

5. Toilet rooms shall have lavatories with narrow aprons, which when mounted at standard height are usable by individuals in

wheelchairs, or shall have lavatories mounted higher, when particular designs demand, so that they are usable by individuals in wheelchairs.

Note: It is important that drainpipes and hot water pipes under a lavatory be covered or insulated so that a wheelchair individual without sensation will not burn oneself.

6. Some mirrors and shelves shall be provided above lavatories at a height as low as possible and no higher than forty inches [101.6 centimeters] above the floor, measured from the top of the shelf and the bottom of the mirror.
7. Toilet rooms for men shall have wall-mounted urinals with the opening of the basin nineteen inches [48.26 centimeters] from the floor.
8. Toilet rooms shall have an appropriate number (note 5) of towel racks, towel dispensers, and other dispensers and disposal units mounted no higher than forty inches [101.6 centimeters] from the floor.
9. Water fountains. An appropriate number (note 5) of water fountains or other water dispensing means shall be accessible to, and usable by, the physically disabled.
10. Water fountains or coolers shall have up-front spouts and controls.
11. Water fountains or coolers shall be hand-operated or hand-and-foot operated. (See also American Standard Specifications for Drinking Fountains, Z4.2-1942.)

Note 1. Conventional floor-mounted water coolers can be serviceable to individuals in wheelchairs if a small fountain is mounted on the side of the cooler thirty inches [76.2 centimeters] above the floor.

Note 2. Wall-mounted, hand-operated coolers of the latest design, manufactured by many companies, can serve the able-bodied and the physically disabled equally well when the cooler is mounted with the basin thirty-six inches [91.44 centimeters] from the floor.

Note 3. Fully recessed water fountains are not recommended.

Note 4. Water fountains should not be set into an alcove unless the alcove is wider than a wheelchair.

Note 5. As used in this section, appropriate number means the number of a specific item that would be necessary, in accord with the purpose and function of a building or facility, to

accommodate individuals with specific disabilities in proportion to the anticipated number of individuals with disabilities who would use a particular building or facility.

Example: Although these specifications shall apply to all buildings and facilities used by the public, the numerical need for a specific item would differ, for example, between a major transportation terminal, where many individuals with diverse disabilities would be continually coming and going, an office building or factory, where varying numbers of individuals with disabilities of varying manifestations (in many instances, very large numbers) might be employed or have reason for frequent visits, a school or church, where the number of individuals may be fixed and activities more definitive, and many other buildings and facilities dedicated to specific functions and purposes.

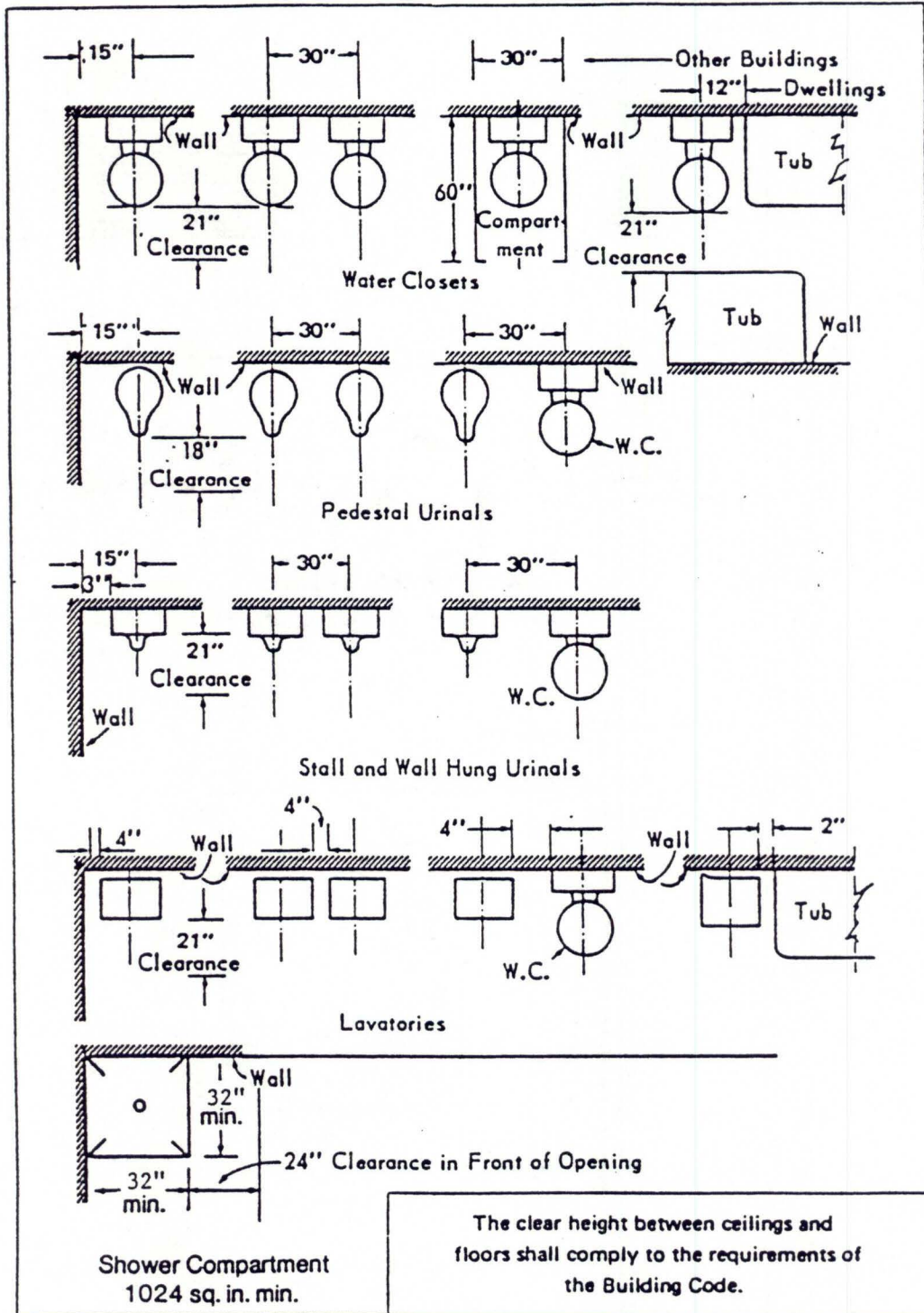
Note. Disabilities are specific and where the individual has been properly evaluated and properly oriented and where architectural barriers have been eliminated, a specific disability does not constitute a handicap. It should be emphasized that more and more of those physically disabled are becoming participants, rather than spectators, in the fullest meaning of the word.

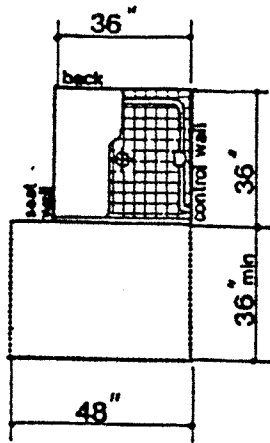
History: Amended effective April 1, 1984.

General Authority: NDCC 43-18-09

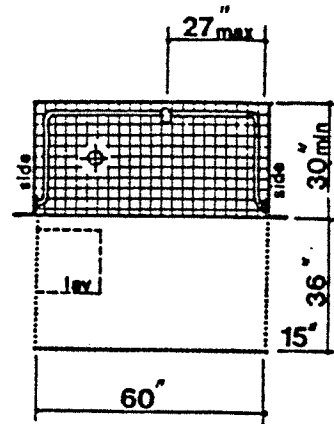
Law Implemented: NDCC 43-18-09

Diagram 62-03-07 Minimum Fixture Clearances



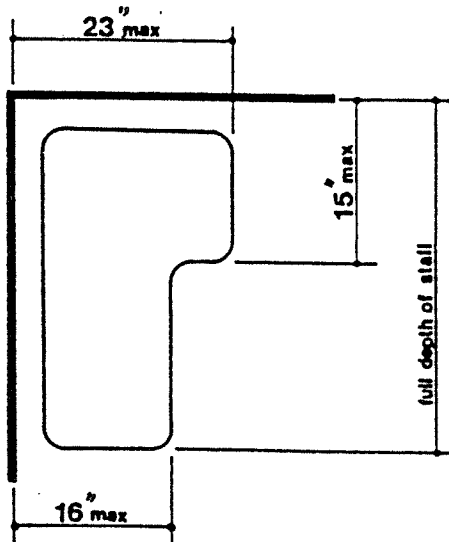


(a)
36-in by 36-in

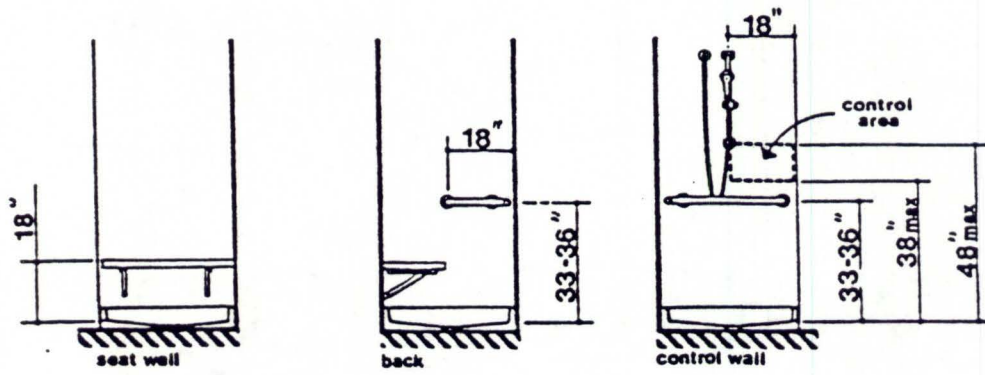


(b)
30-in by 60-in

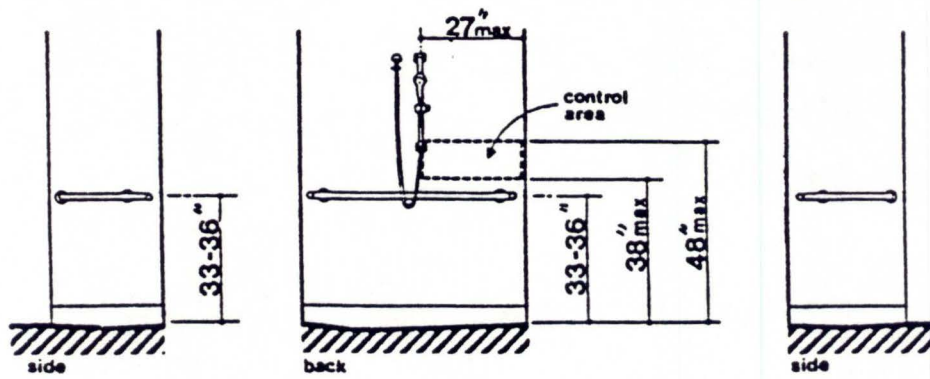
Shower Size and Clearances



Shower Seat Design

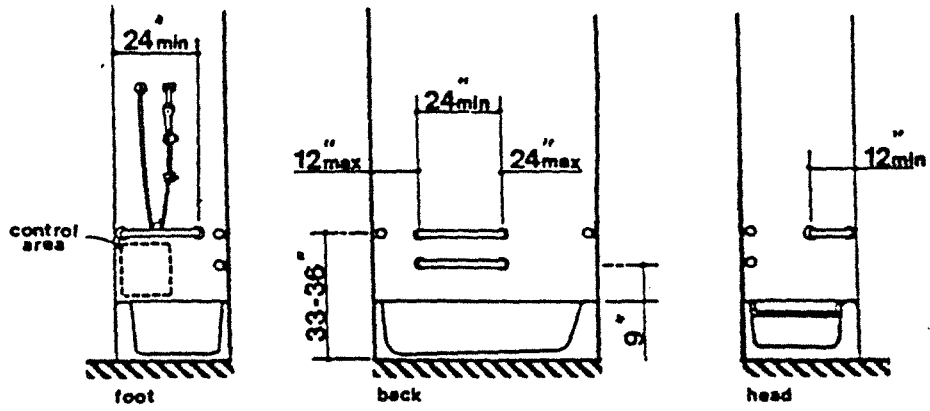


(a)
36-in by 36-in

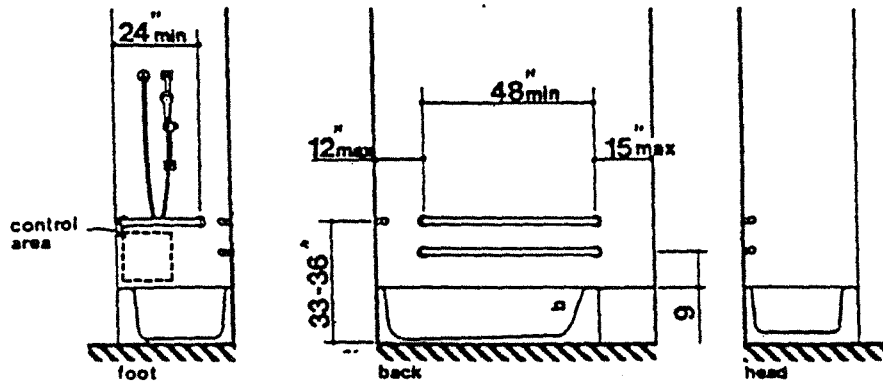


(b)
30-in by 60-in

Grab Bars at Shower Stalls

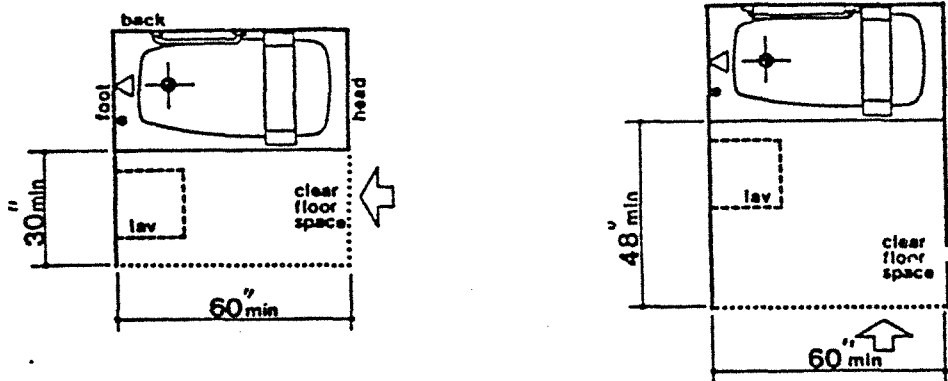


(a)
With Seat in Tub

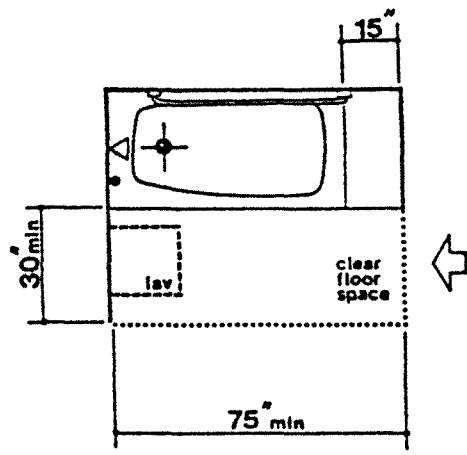


(b)
With Seat at Head of Tub

Grab Bars at Bathtubs



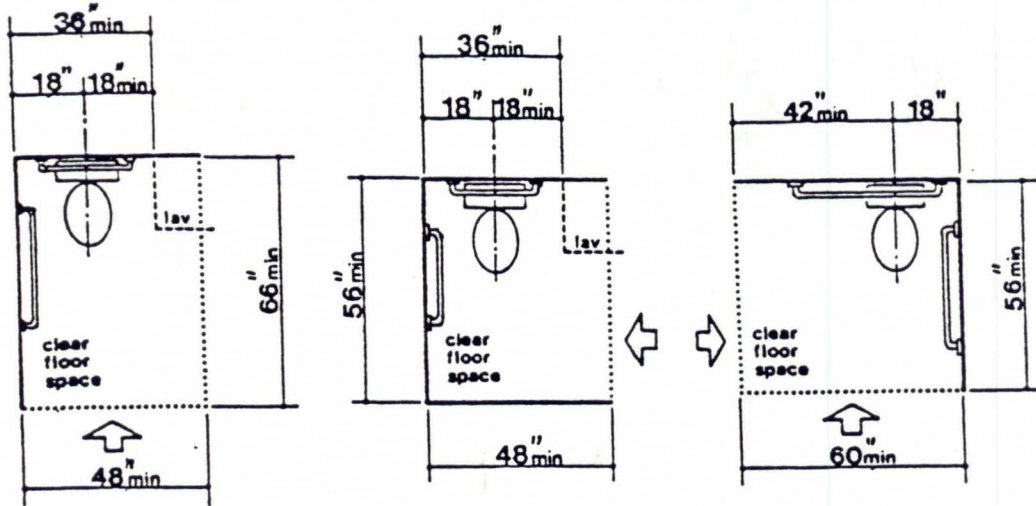
(a)
With Seat in Tub



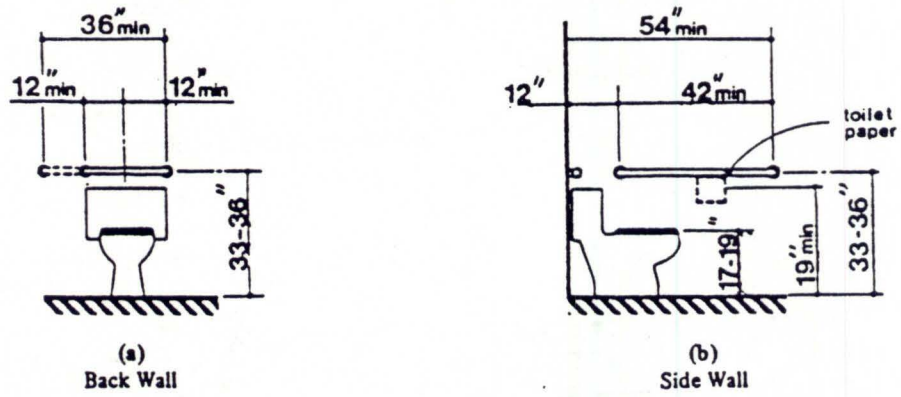
(b)
With Seat at Head of Tub

SYMBOL KEY:
 ● Shower controls
 ▲ Shower head
 ◆ Drain

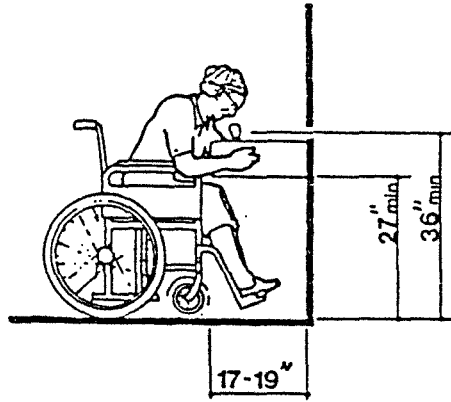
Clear Floor Space at Bathtubs



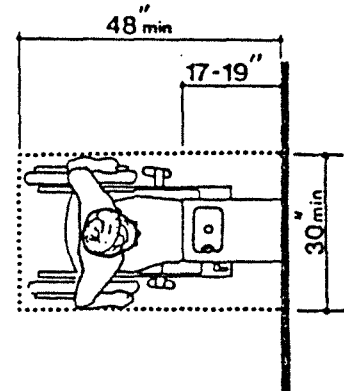
Clear Floor Space at Water Closets



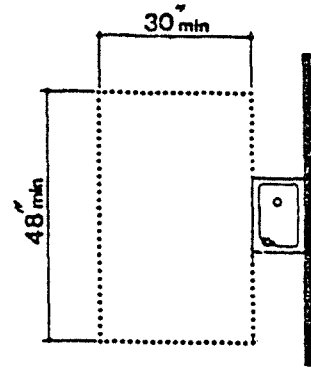
Grab Bars at Water Closets



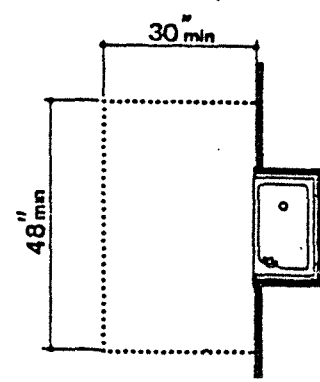
(a) Spout Height and
30 min



(b) Clear Floor Space

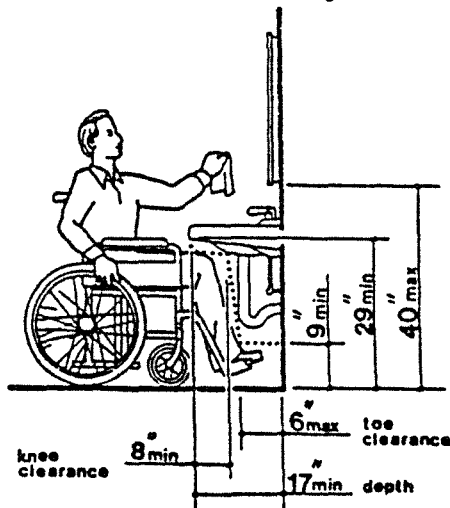


(c) Free-Standing
Fountain or Cooler

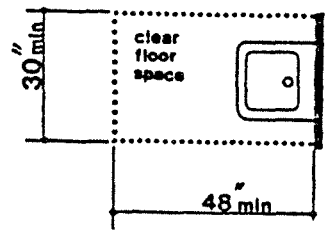


(d) Built-In
Fountain or Cooler

Drinking Fountains and Water Coolers



Lavatory Clearances



Clear Floor Space at Lavatories

**TABLE 62-03-07.1
MINIMUM NUMBER OF PLUMBING FIXTURES**

Use Group or Type of Bldg.	Water Closets (Urinals — See Note 4)		Lavatories	Fountains	Bathtubs or Showers	Other	Note Reference
	No. of Persons	No. of Fixtures					
I. Assembly							
A. Assembly — "Quiet or "Brief" includes churches, auditoriums, museums, theatres, waiting rooms, day rooms, libraries, and other similar uses.	1-50 51-300 each add'n 300	1 2 add 1	½ no. of water closets	1/1000 people	—	—	3, 5, 8
B. Assembly — where food and drinks are served. Includes arenas, stadiums, ball parks, passenger terminals, convention halls and other similar uses.	1-100 101-200 201-400 each add'n 300	2 3 4 add 1	½ no. of water closets	1/1000 people	—	—	2, 3, 5, 8
C. Assembly — Restaurants, bars, and nightclubs where seating is provided.	1-25 26-50 51-100 101-200 each add'n 200	1 2 3 4 add 1	½ no. of water closets		—	1 service sink/floor	2, 3, 5, 8

**TABLE 62-03-07.1
MINIMUM NUMBER OF PLUMBING FIXTURES**

Use Group or Type of Bldg.	Water Closets (Urinals — See Note 4)		Lavatories	Fountains	Bathtubs or Showers	Other	Note Reference
	No. of Persons	No. of Fixtures					
D. Assembly — Recreational facilities includes health spas, country clubs, public swimming pools and other similar uses.	1-40 each add'n 40	1 add 1	½ no. of water closets	1/100 people	1 shower/ 40 people	1 service sink/floor (where applicable)	3, 5, 8
E. Assembly — Schools,							
1. Preschool	1-15 each add'n 15	1 add 1	½ no. of water	1/100 people	—	1 service sink/floor	3, 5, 8, 10
2. Elementary	1-25 each add'n 25	1 add 1	½ no. of water closets	1/100 people	—	1 service sink/floor	3, 5, 8, 10
3. Secondary	1-30 each add'n 30	1 add 1	½ no. of water closets	1/100 people	—	1 service sink/floor	3, 5, 8, 10
II. Workplaces							
A. Industrial/ Service when a locker room is provided and used mainly at shift change.	1-10 11-25 26-50 51-75 76-100 each add'n 50	1 2 3 4 5 add 1	½ no. of water closets	1/100 people	1 shower/ sink/floor when exposed to extreme heat or skin contamination	1 service sink/floor	3, 5, 8

B. Employees — all occupancies except industrial/service such as in stores, shopping centers, banks, office buildings and light industrial/service uses without locker rooms.	1-8	1	½ no. of water closets	1/100 people	—	1 service sink/floor	3, 5, 8, 10
	9-40	2					
	41-75	3					
	each add'n 60	add 1					
III. Mercantile/Business							
A. Customers in stores, shopping centers, banks, office buildings and carry-out food establishments where seating is not provided.	1-50	1	½ no. of water closets	1/1000 people			Requirements for fixtures for customer may be met by fixture requirements for employees. No additional fixtures are required if the employee facilities are available for customer uses. 2, 3, 5, 6, 8
	51-300	2					
	each add'n 300	add 1					
IV. Dwelling Units							
A. Single	—	1	1	—	1	1 kitchen sink 1 laundry tray or 1 auto/washer standpipe	

**TABLE 62-03-07.1
MINIMUM NUMBER OF PLUMBING FIXTURES**

Use Group or Type of Bldg.	Water Closets (Urinals — See Note 4)		Lavatories	Fountains	Bathtubs or Showers	Other	Note Reference
	No. of Persons	No. of Fixtures					
B. Multiple	—	1/unit	1/unit	—	—	1 kitchen sink/unit 1 laundry tray, or auto/washer standpipe/10 units	9
C. Dormitories, Boarding Houses	1-20 each add'n 20	2 add 1	½ no. of water closets	1/100 people or 1/floor	1-20 people 2 fixtures, each add'n 20- add 1	1 service sink/floor 1 laundry/ tray, or auto/washer standpipe/ 10 people	3, 9
D. Hotel/Motel	—	1/unit	1/unit	—	1/unit	1 service sink/floor	
V. Institutional							
A. Hospital	1-8 patients each add'n 8	1 add 1	½ no. of water closets	—	1/20 patients	1 service sink/floor	
B. Hospital — Private or semi-private rooms	—	1	1	—	1	—	

C. Penal short term detention	1/cell or ¼ inmates	— —	1/cell or ¼ inmates	—	1/6 inmates	1 service sink/floor	Water closet and lavatory may be a combination fixture.
Long term correctional	1/cell or 1/8 inmates	— —	1/15 inmates 1/8 inmates	—	1/15 inmates	1 service sink/floor	All showers and lav. in penal institutions to have thermostatic control and timing devices

NOTES:

1. This table shall be used in the absence of local building code requirements. Fire codes may also be consulted for assembly values. For handicap requirements see local, state and national ordinances. Additional fixtures may be required where environmental conditions or special activities may be encountered.
2. In food preparation areas, fixture requirements may be dictated by local health codes.
3. Whenever both sexes are present in approximately equal numbers, multiply the total census by 50 percent to determine the number of persons for each sex to be provided for. This regulation only applies when specific information, which would otherwise affect the fixture count, is not provided.
4. Not more than 50 percent of the required number of water closets may be urinals.
5. In buildings constructed with multiple floors, accessibility to the fixtures shall not exceed one vertical story.
6. Fixtures for public uses as required by this section may be met by providing a centrally located facility accessible to several stores. The maximum distance from entry to any store to this facility shall not exceed 500 feet.
7. In stores with floor area of 150 square feet or less, the requirements of this section to provide facilities for use by employees may be met by providing a centrally located facility accessible to several stores. The maximum distance from entry to any store to this facility shall not exceed 300 feet.
8. Fixtures accessible only to private offices shall not be counted to determine compliance with this section.
9. Multiple dwelling units or boarding houses without public laundry rooms shall not require laundry trays.
10. Where only one water closet is required, one toilet facility with a lockable door is permitted.

History: Effective July 1, 1985; Amended effective October 1, 1989

62-03-10-04. Protection of potable water supply.

1. **General.** A potable water supply system shall be designed, installed, and maintained in such manner as to prevent contamination from nonpotable liquids, solids, or gases from being introduced into the potable water supply through cross connections or any other piping connections to the system.
2. **Interconnections.** Interconnection between two or more public water supplies shall be permitted only with the approval of the health authority having jurisdiction.
3. **Cross connection control.** Cross connections are prohibited except when and where, as approved by the authority having jurisdiction, suitable protective devices are installed, tested, and maintained to ensure proper operation on a continuing basis.
4. **Individual water supplies.** Cross connections between an individual water supply and a potable public supply shall not be made unless specifically approved by the authority having jurisdiction.
5. **Toxic materials.**
 - a. Piping conveying potable water shall be constructed of nontoxic material.
- ~~6. b. **Chemicals and other substances.** No chemicals or other substances that could produce either toxic conditions, taste, odor, or discoloration in a potable water system shall be introduced into or used in such systems.~~
- ~~7. c. **Painting of water tanks.** The interior surface of a potable water tank shall not be lined, painted, or repaired with any material which will affect either the taste, odor, color, or potability of the water supply when the tank is placed in or returned to service.~~
- ~~8. 6. **Used piping material.** Piping Material which has been used for any other purpose than conveying potable water shall not be used for conveying potable water.~~
- ~~9. **Connections to boilers.** Potable water connections to boiler feed water systems in which boiler water conditioning chemicals are introduced shall be made through an airgap or provided with an approved backflow preventer located in the potable waterline before the point where such chemicals are introduced. Boilers shall be equipped with twin check valves and appropriate testing arrangements in the cold water supply to the boiler. If toxic materials are to be used in the boiler, additional protection must be installed.~~

10. Prohibited connections to fixtures and equipment. Connection to the potable water supply system for the following shall be protected against backflow:
- a. Operating, dissection, embalming, and mortuary tables or similar equipment - in such installation the hose used for water supply shall terminate at least twelve inches [30.48 centimeters] away from every point of the table or attachments.
 - b. Water closets equipped with flushometer valves or with flushing tanks with submerged float operated ball cocks.
 - c. Seat-acting water closets.
 - d. Bedpan washers.
 - e. Bidets.
 - f. Sterilizers with water supply connections.
 - g. Therapeutic baths with inlets below the rim of the fixture.
 - h. Water operated waste ejectors, such as used by dentists, undertakers, and those who practice colonic irrigation.
 - i. Bathtubs with inlets below the rim of the fixture.
 - j. Wash basins with inlets below the rim of the fixture.
 - k. Bar, soda fountain, or other sinks with submerged inlets.
 - l. Laundry trays with faucets below the rim.
 - m. Sinks with faucets or water inlets below the rim and sinks with loose hose connections.
 - n. Dishwashing sinks or machines with water inlets below the rim.
 - o. Cuspidors with water supply connections.
 - p. Dental cuspidors with water supply connections.
 - q. Hospital appliances generally, such as sterilizers, condensers, filters, stills, pipette washers, aspirators, washers, etc.
 - r. Frostproof hydrants with underground bleed or automatic livestock watering devices.

- s. Industrial vats, tanks, etc., of any description which have an inverted water supply connection, or a water supply connection below the top of the spill rim, or in which a hose filler is used.
- t. Industrial water supplied process appliances with direct water connections.
- u. A rubber hose with hand control or self-closing faucets attached, as used in connection with baths, industrial vats, tanneries, etc.
- v. Pressure water supplied sealing rings on sewage and sludge pumps.
- w. Water supply for priming connections.
- x. Water supply (hot or cold) to laundry equipment.
- y. Condenser cooling connections for refrigeration and air-conditioning machinery.
- z. Drains from fire sprinklers connected direct to sewers or wastes.
- aa. Steamtables.
- bb. Condensers.
- cc. Stills.
- dd. Aspirators.
- ee. Chlorinators.
- ff. Photographic developing tanks.
- gg. Fixture inlets or valved outlets with hose attachments which may constitute a cross connection shall be protected by an approved vacuum breaker installed at least six inches [15.24 centimeters] above the highest point of usage and located on the discharge side of the last valve. Fixtures with integral vacuum breakers manufactured as a unit may be installed in accordance with their approval requirements.
- hh. Laboratory water faucets and cocks with serrated nipples or hose connections.
- ii. Any other fixture or installation creating a similar hazard.

~~11.~~ Refrigerating unit condensers and cooling jackets. Except where potable water provided for a refrigerator condenser or cooling jacket is entirely outside the piping or tank containing a toxic or flammable refrigerant as listed in American national standards institute B9.1-1964 Par. 5.1.2 and 5.1.3 with two separate thickness of metal separating the refrigerant from the potable water supply, inlet connection shall be provided with an approved check valve. Also adjacent to and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five pounds per square inch {2.27 kilograms per 6.45 square centimeters} above the maximum water pressure at the point of installation shall be provided if the refrigeration units contain more than twenty pounds {9.07 kilograms} of refrigerants.

7. Water as a heat transfer fluid. Potable water may be used as a heat transfer fluid provided the system designed is approved by the administrative authority.

~~12.~~ 8. Used water return prohibited. Water used for cooling of equipment or other processes shall not be returned to the potable water system. Such water shall be discharged into a drainage system through an airgap or may be used for nonpotable purposes on written approval of the administrative authority.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-10-05. Protection against backflow and backsiphonage.

1. Water outlets. A potable water system shall be protected against backflow and backsiphonage by providing at each outlet by the following:

a. An airgap as specified herein between the potable water outlet and the flood level rim of the fixture it supplies or between the outlet and any other source of contamination.

b. Where an airgap is impracticable, a backflow preventer device or vacuum breaker approved as hereinafter provided.

2. Minimum required airgap.

a. How measured. The minimum required airgap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

- b. Size. The minimum required airgap shall be twice the effective opening of a potable water outlet unless the outlet is a distance less than three times the effective opening away from a wall or similar vertical surface in which cases the minimum required airgap shall be three times the effective opening of the outlet. In no case shall the minimum required airgap be less than shown in the following table:

MINIMUM AIRGAPS FOR PLUMBING FIXTURES

Fixture	Minimum Airgap	
	When Not Affected By Near Wall * (Inches)	When Affected By Near Wall ** (Inches)
Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter	1	1 1/2
Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter	1 1/2	2 1/4
Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter	2	3
Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)	1	1 1/2
Effective openings greater than one inch	2X Diameter of effective opening	3X Diameter of effective opening

* Side walls, ribs, or similar obstructions do not affect airgaps when spaced from inside edge of spout opening a distance greater than three times the diameter of the effective opening for a single wall, or a distance greater than four times the diameter of the effective opening for two intersecting walls.

** Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater airgap when spaced closer to the

nearest inside edge of spout opening than specified in Note 1, above. The effect of three or more such vertical walls or ribs has not been determined. In such cases, the airgap shall be measured from the top of the wall.

3. Devices for the protection of the potable water supply. Approved backflow preventers or vacuum breakers shall be installed with any plumbing fixture or equipment, the potable water supply outlet of which may be submerged and which cannot be protected by a minimum airgap. When plumbing fixtures and equipment are subject to backflow conditions, approved backflow preventers or vacuum breakers must be used. Connection to the potable water supply system, for the following fixtures or equipment, must be protected against backflow with any one or more of the devices as indicated.

a. Low inlet to receptacles containing toxic substances (vats, storage containers, plumbing fixtures).

- (1) An approved airgap.
- (2) Reduced pressure principle backflow preventer.
- (3) Pressure vacuum breaker unit.
- (4) Atmospheric vacuum breaker unit.

b. Low inlet to receptors containing nontoxic substances (steam, air, food, beverages, etc.)

- (1) An approved airgap.
- (2) Reduced pressure principle backflow preventer.
- (3) Pressure vacuum breaker unit.
- (4) Atmospheric vacuum breaker unit.
- (5) Approved doublecheck valve assembly.

c. Outlets with hose attachments which may constitute a cross connection.

- (1) An approved airgap.
- (2) Reduced pressure principle backflow preventer.
- (3) Pressure vacuum breaker unit.
- (4) Atmospheric vacuum breaker unit.

- d. Coils or jackets used as heat exchangers in compressors, degreasers, and other such equipment involving toxic substances.
- (1) An approved airgap.
 - (2) Reduced pressure principle backflow preventer.
 - (3) Pressure vacuum breaker unit.
- e. Heat exchangers for systems used for heat recovery or solar systems.
- (1) Heat exchangers must be separated from the potable water by a double wall construction. A space open to atmosphere must be provided between the two walls.
 - (2) Exception:
 - (a) Heat exchangers using a potable water transfer fluid may be of single wall construction.
 - (b) Heat exchangers with a pressure on the transfer fluid side a minimum of ten pounds per square inch lower than the pressure on the potable water side and protected with a pressure gradient monitor may be of single wall construction. The pressure gradient monitor must be maintained as per subsection 4.
- f. Systems subject to back pressure.
- (1) Nontoxic substances.
 - (a) An approved airgap.
 - (b) Reduced pressure principle backflow preventer.
 - (c) Approved doublecheck valve assembly.
 - (2) Toxic substances.
 - (a) An approved airgap.
 - (b) Reduced pressure principle backflow preventer.
 - (3) Sewage. An approved airgap.
4. Approval of devices. Before any device for the prevention of backflow or backsiphonage is installed, it shall have first been certified by a recognized testing laboratory acceptable to the administrative authority. Devices installed in a building potable water supply distribution system for

protection against backflow shall be maintained in good working condition by the person or persons responsible for the maintenance of the system.

5. Protective devices required:

a. In the installation of the following list of fixtures and devices, where an airgap is not provided or is impracticable, approved backflow preventers shall be installed in all supply lines according to the following table:

GROSS CONNECTIONS WHERE PROTECTIVE DEVICES ARE REQUIRED
AND CRITICAL LEVEL (C-L) SETTINGS FOR BACKFLOW PREVENTERS *

Fixture or Equipment	Method of Installation
Aspirators and Ejectors	C-L at least six inches above flood level of receptacle
Cup Beverage Vending Machines	C-L at least twelve inches above flood level of machine
Dental Units	On models without built-in vacuum breakers C-L at least six inches above flood level rim of bowl
Dishwashing Machines	C-L at least six inches above flood level of machine
Flushometers (closet and urinal)	C-L at least six inches above top of fixture supplied
Garbage Can Cleaning Machines	C-L at least six inches above flood level of machine
Hose Outlets	C-L at least six inches above highest point on hose line
Laundry Machines	C-L at least six inches above flood level of machine
Lawn Sprinklers	C-L at least twelve inches above highest sprinkler or discharge outlet
Steam Tables	C-L at least six inches above flood level
Tanks and Vats	C-L at least six inches above flood level rim or line
Trough Urinals	C-L at least thirty inches above perforated flush pipe
Flush Tanks	Equip with an approved ball cock. In all cases the ball cock should be located above the overflow level of the tank and the outlet terminated one inch above the overflow or provided

Hose Bibbs (where aspirators or ejectors could be connected)	with a backflow preventer located at least one inch above the overflow C-L at least six inches above flood level of receptacle served
--	--

* Critical Level (C-L) is defined as the level to which the backflow preventer (vacuum breaker) may be submerged before backflow will occur. Where C-L marking is not shown on the preventer, the bottom of the device shall be taken as the C-L.

b. Connections subject to back pressure. Where a potable water connection is made to a line, fixture, tank, vat, pump, or other equipment with a hazard of backflow or backsiphonage and where the water connection is subject to back pressure, and an airgap cannot be installed, the administrative authority shall require the use of an approved reduced pressure zone backflow preventer. A partial list of such connections is shown in the following table:

PARTIAL LIST OF CROSS CONNECTIONS SUBJECT TO BACK PRESSURE

Chemical Lines Cup Beverage Vending Machines Dock Water Outlets Individual Water Supplies Industrial Process Waterlines Pressure Tanks	Pumps Steam Lines Swimming Pools Tanks and Vats - Bottom Inlets Hose Bibbs
---	--

6- 5. Installation of devices backflow preventers.

- a. Vacuum Atmospheric vacuum breakers. Vacuum Atmospheric vacuum breakers shall be installed with the critical level at least six inches [15.24 centimeters] above the flood level rim of the fixture they serve and on the discharge side of the last control valve to the fixture. No shutoff valve or faucet shall be installed beyond the vacuum breaker. Where C-L mark is not shown on the preventer the bottom of the device shall be the C-L reference.
- b. Reduced pressure zone backflow preventer. A reduced pressure zone type backflow preventer may be installed subject to full static pressure. Pressure type vacuum breakers. Pressure type vacuum breakers must be installed at a height of at least twelve inches [30.48 centimeters]

above the flood level rim of the fixture, tank, or similar device.

c. Doublecheck valves and reduced pressure principle valves. Such devices must be installed at not less than twelve inches [30.48 centimeters] above the floor. A reduced pressure zone type backflow preventer must be installed where there is a high potential health hazard.

~~c.~~ d. Devices of all types. Backflow and backsiphonage preventing prevention devices shall be accessibly located preferably in the same room with the fixture they serve. Installation in utility or service spaces, provided they are readily accessible, is also permitted. Backflow prevention devices may not be installed in pits or similar potentially submerged locations. All devices with a vent to atmosphere may not be located within a fuel hood.

~~7-~~ 6. Tanks and vats - Below rim supply.

a. Where a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the table in subsection 3 of section 62-03-10-08, the overflow pipe shall be provided with an airgap as close to the tank as possible.

b. The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat and with all outlets closed except the airgapped overflow outlet.

c. The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

7. Connections to boilers. Potable water connections to boiler feed water systems must be made through an airgap or provided with an approved doublecheck backflow preventer with atmospheric vent and appropriate testing arrangements. If toxic materials are to be used in the boiler, additional protection must be installed.

8. Refrigeration unit condensers and cooling jackets. Except where potable water provided for a refrigeration condenser or cooling jacket is entirely outside the piping or tank containing a toxic or flammable refrigerant as listed in American national standards institute B9.1-1964 Par. 5.1.2 and 5.1.3 or with two separate thicknesses of metal separating the refrigerant from the potable water supply, inlet connection must be provided with an approved doublecheck valve assembly.

Also, adjacent to and at the outlet side of the doublecheck valve, an approved pressure relief valve set to relieve at five pounds per square inch [2.27 kilograms per 6.45 square centimeters] above the maximum water pressure at the point of installation must be provided if the refrigeration units contain more than twenty pounds [9.07 kilograms] of refrigerants.

9. Connections to carbonated beverage dispensers.

a. Water supply connections to a carbonated beverage dispenser must be made with a doublecheck valve with atmospheric vent or equivalent protection. The doublecheck valve with atmospheric vent devices must be located within twelve inches [30.48 centimeters] of the equipment.

b. The piping downstream of this backflow preventer shall not be affected by carbon dioxide gas.

8- 10. Barometric loop. Water connections not subject to back pressure where an actual or potential backflow or backsiphonage hazard exists may in lieu of devices specified in subsection 5 be provided with a barometric loop. Barometric loops shall precede the point of connection.

9- 11. Lawn sprinklers. Lawn sprinkler systems when connected to a potable water system shall be installed in accordance with this section. Adequate and proper provision shall be made for control and drainage, and to prevent backsiphonage. The water supply lines may be laid at a depth less than three and one-half feet [106.68 centimeters], if and when approved by the administrative authority. Detailed plans of lawn sprinkler systems shall be submitted with the application for a permit to make the installation. Water shall not be turned on to any lawn sprinkler system until it has been inspected and approved. The administrative authority shall give approval on the materials used in the installation of lawn sprinkler systems.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-10-13. Water supply distribution.

1. Size of water service. The water service pipe from the street main to the water distribution system for the building shall be of brass, copper (type K or L), cast iron, ~~cement asbestos~~, or plastic national sanitation foundation approved, minimum continuous working pressure of at least one hundred sixty pounds at seventy-three and four-tenths degrees Fahrenheit

[72.57 kilograms at 23 degrees Celsius], with appropriate approved fittings. The water service pipe shall be of sufficient size to furnish an adequate flow of water to meet the requirements of the building at peak demand, and in no case shall be less than the size shown in the following table. Exceptions to this section must be approved in writing by the administrative authority.

MINIMUM SIZE OF WATER SERVICE
Based on Maximum Flow Eight Foot Second
and Predominately for Flush Tanks

Maximum Number of Fixture Units **	Minimum Size of Pipe *** (Inches)
14	3/4 *
34	1
77	1 1/4
135	1 1/2
290	2
900	3
2000	4
6500	6

* Does not include residential type buildings unless water main pressure exceeds 60 PSI.

** When provision is made for the future installation of fixtures, those provided for shall be considered in determining the size of the water service.

*** Larger pipe sizes must be considered if building to be served is more than three stories in height, if developed length of pipe exceeds 100 feet, or if available main pressure is less than 40 PSI.

2. Supply demand. The supply demand in gallons per minute in the building water distributing system shall be determined on the basis of the load in terms of supply fixture units and of the relationship between load and supply demand as shown in the following two tables:

SIZING THE WATER SUPPLY SYSTEM *

Fixture	Occupancy	Type of Supply Control	Load Fixture Units
Bathroom group	Private	<u>Flush</u> Flushometer valve for closet	8
Bathroom group	Private	Flush tank for closet	6
Bathtub	Private	Faucet	2
Bathtub	Public	Faucet	4
Clothes washer	Private	Faucet	2
Clothes washer	Public	Faucet	4
Combination fixture	Private	Faucet	3
Kitchen sink	Private	Faucet	2
Kitchen sink	Hotel, restaurant	Faucet	4
Laundry trays (1 to 3)	Private	Faucet	3
Lavatory	Private	Faucet	1
Lavatory	Public	Faucet	2
Separate shower	Private	Mixing valve	2
Service sink	Office, etc.	Faucet	3
Shower head	Private	Mixing valve	2
Shower head	Public	Mixing valve	4
Urinal-pedestal	Public	<u>Flush</u> Flushometer valve	10
Urinal stall or wall	Public	<u>Flush</u> Flushometer valve	5
Urinal stall or wall	Public	Flush tank valve	3
Water closet	Private	<u>Flush</u> Flushometer valve	6
Water closet	Private	<u>Flush</u> Flushometer tank	3
<u>Water closet</u>	Private	<u>Flush</u> tank	3
<u>Water closet</u>	Public	<u>Flush</u> Flushometer valve	10
<u>Water closet</u>	Public	<u>Flushometer tank</u>	5
<u>Water closet</u>	Public	<u>Flush tank</u>	5

Water supply outlets for items not listed above shall be computed at their maximum demand, but in no case less than:

Fixture	Number of Fixture Units	
	Private Use	Public Use
3/8 inch	1	2
1/2 inch	2	4
3/4 inch	3	6
1 inch	6	10

* For supply outlets likely to impose continuous demands, estimate continuous supply separately and add to total demand for fixtures.

* The given weights are for total demand. For fixtures with both hot and cold water supplies, the weights for maximum separate demands may be taken as 3/4 the listed demand for the supply.

* A bathroom group for the purposes of this table consists of not more than one water closet, one lavatory, one bathtub, one shower stall or not more than one water closet, two lavatories, one bathtub, or one separate shower stall.

ESTIMATING DEMAND

Supply Systems Predominately For Flush Tanks <u>and</u> Flushometer Tanks		Supply Systems Predominately For Flush Valves	
Load (Water Supply Fixture Units)	Demand GPM	Load (Water Supply Fixture Units)	Demand GPM
6	5		
8	6.5		
10	8	10	27
12	9.2	12	28.6
14	10.4	14	30.2
16	11.6	16	31.8
18	12.8	18	33.4
20	14	20	35
25	17	25	38
30	20	30	41
35	22.5	35	43.8
40	24.8	40	46.5
45	27	45	49
50	29	50	51.5
60	32	60	55
70	35	70	58.5
80	38	80	62
90	41	90	64.8
100	43.5	100	67.5
120	48	120	72.5
140	52.5	140	77.5
160	57	160	82.5
180	61	180	87
200	65	200	91.5

225	70	225	97
250	75	250	101
275	80	275	105.5
300	85	300	110
400	105	400	126
500	125	500	142
750	170	750	178
1,000	208	1,000	208
1,250	240	1,250	240
1,500	267	1,500	267
1,750	294	1,750	294
2,000	321	2,000	321
2,250	348	2,250	348
2,500	375	2,500	375
2,750	402	2,750	402
3,000	432	3,000	432
4,000	525	4,000	525
5,000	593	5,000	593
6,000	643	6,000	643
7,000	685	7,000	685
8,000	718	8,000	718
9,000	745	9,000	745
10,000	769	10,000	769

History: Amended effective July 1, 1985; October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-10-15. Hot water distribution.

1. Hot water supply system. In residences and buildings intended for human occupancy, hot water shall be supplied to all plumbing fixtures and equipment used for bathing, washing, culinary purpose, cleansing, laundry, or building maintenance.
2. Return circulation - where required. Hot water supply systems in buildings four or more stories high or in buildings where developed length of hot water piping from the source of hot water supply to the farthest fixture supplied exceeds one hundred feet [30.48 meters] shall be of the return circulation type.
3. Minimum requirements for hot water storage tanks. Hot water storage tanks shall be adequate in size, when combined with the Btu input of the water heating equipment to provide the rise in temperature necessary.

The water heater and storage tank shall be sized to provide sufficient hot water to provide both daily requirements and hourly peak loads of the occupants of the building.

Hot water storage tanks shall meet construction requirements of the American society of mechanical engineers, American gas association, or underwriters' laboratories as appropriate.

Storage tanks less in volume than those requirements specified by the American society of mechanical engineers shall be of durable materials and constructed to withstand one hundred twenty-five pounds per square inch [56.70 kilograms per 6.45 square centimeters] with a safety factor of two.

The water inlets and outlets of a hot water storage tank shall be not less than the hot water distribution pipe served.

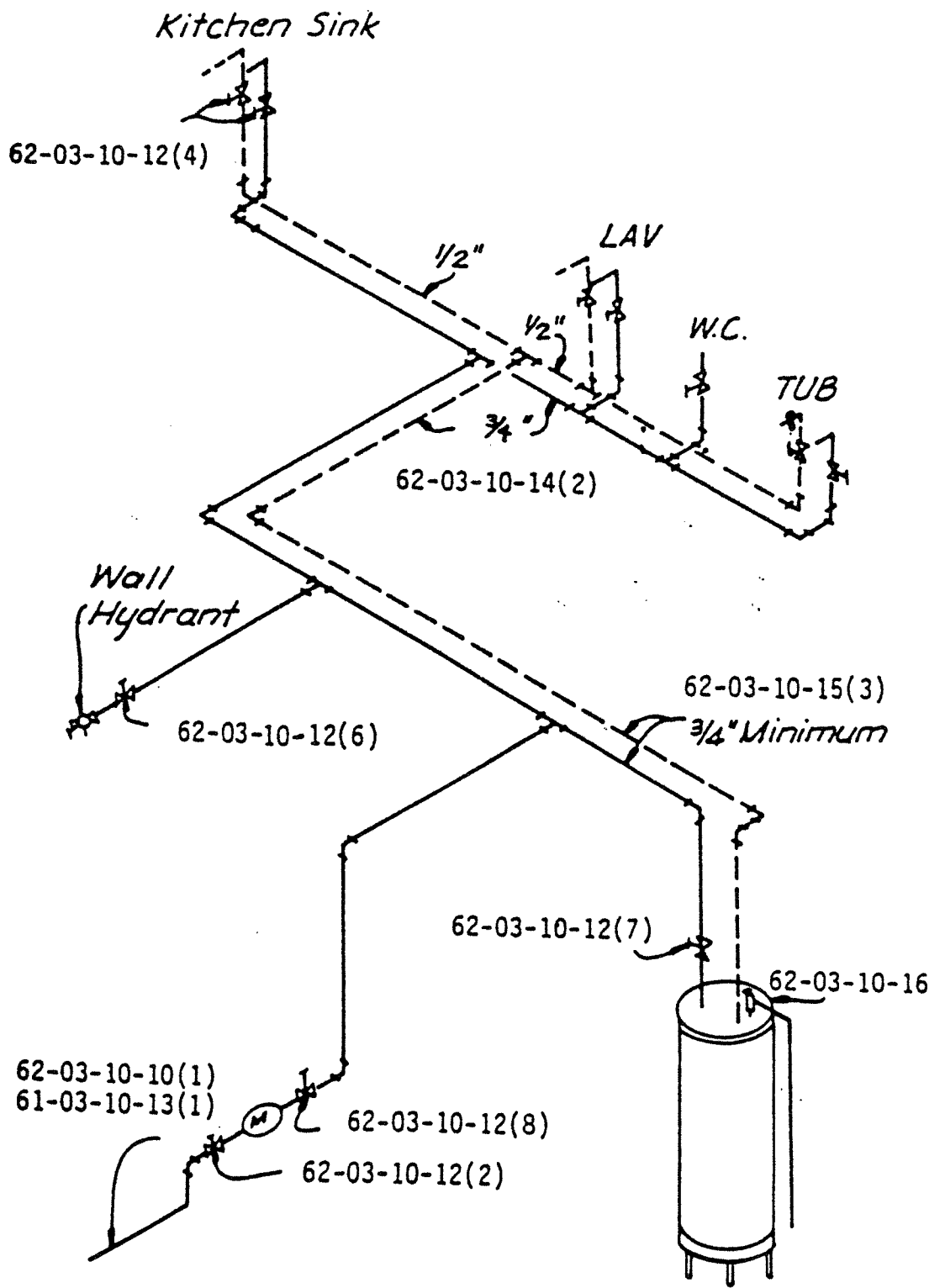
All storage tanks shall be protected against excessive temperatures and pressure conditions as specified in this article.

4. Drain cocks or valves for hot water storage tanks. Drain cocks or valves for emptying shall be installed at the lowest point of each hot water storage tank.
5. Mixed water temperature control.
 - a. The temperature of mixed water to multiple or gang showers must be controlled by a master thermostatic blender or such showers may be individually regulated by balanced pressure mixing valves.
 - b. Showers and bathtub/shower combinations in buildings other than single dwelling units must be protected with individual shower water temperature control valves of the balanced pressure mixing type or the thermostatic mixing valve type, or the combination pressure balance, thermostatic type.

History: Amended effective April 1, 1984; July 1, 1985; October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09



62-03-12-09. Common vents.

1. Individual vent as common vent. An individual vent, installed vertically, may be used as a common vent for two fixture traps when both fixture drains connect with a vertical drain at the same level.
2. Fixtures connected to stack at different levels. A common vent may be used for two fixtures set on the same floor level but connecting at different levels in the stack, provided the vertical drain is one pipe diameter larger than the upper fixture drain but in no case smaller than the lower fixture drain, whichever is the larger, and that both drains conform to subsection 1.
3. Fixture connected to stack at different floor levels. When a soil or waste stack has fixtures connecting at different levels, all fixtures other than those connected at the highest floor level shall be vented, except as permitted in subsection ~~2~~ 5 of section ~~62-03-11-06~~ 62-03-12-10 and subsection 3 of section 62-03-12-12.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

(DIAGRAMS AND TABLES THAT FOLLOW CHAPTER 62-03-12)

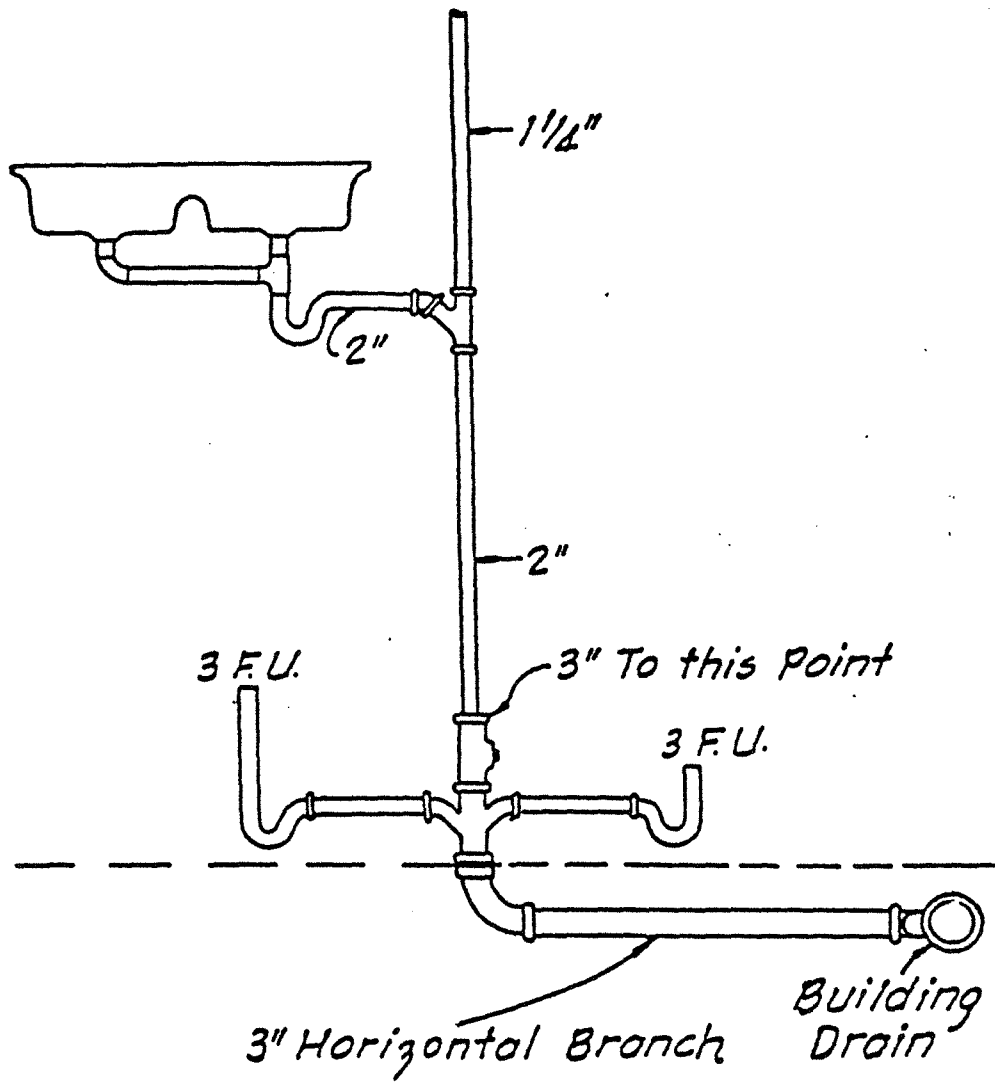
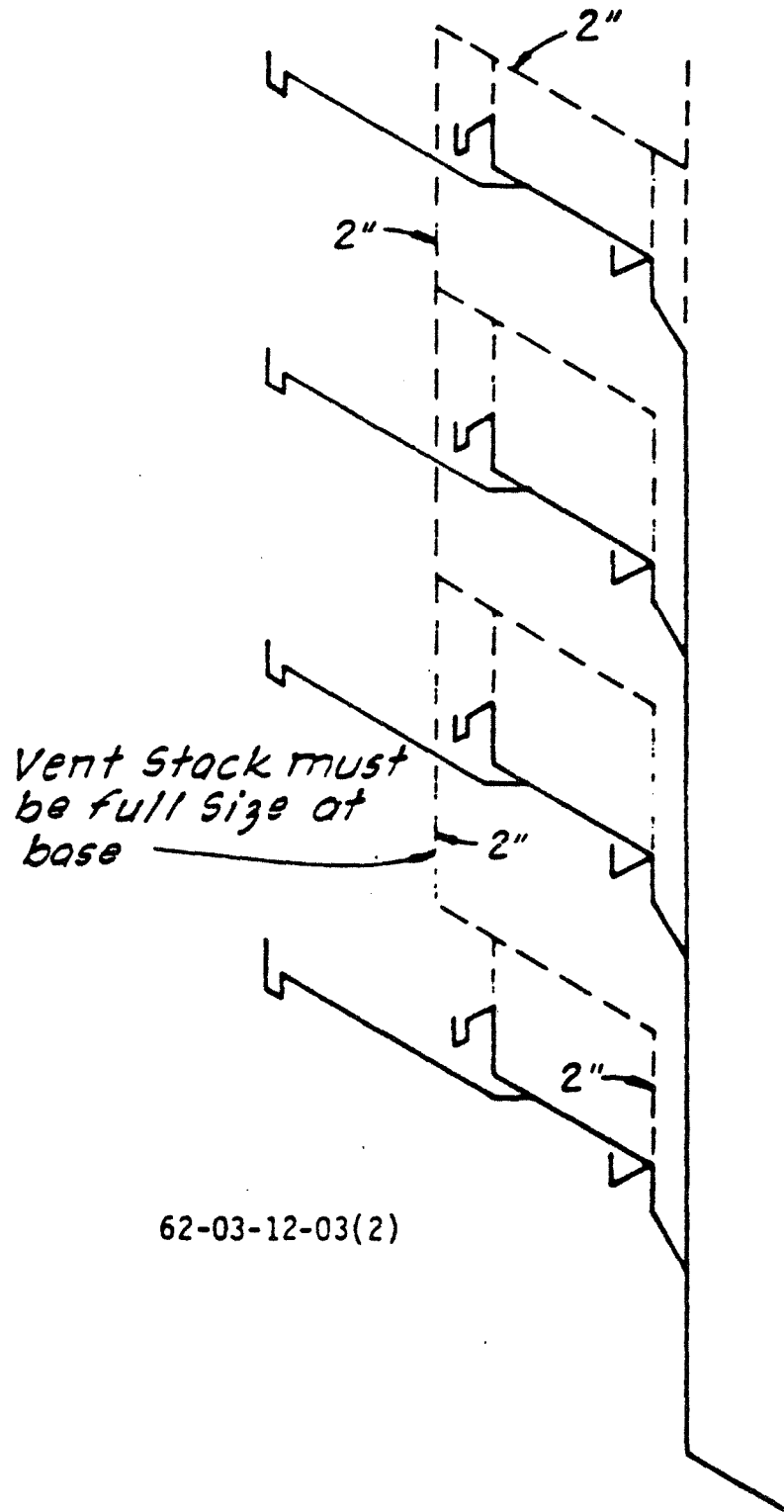


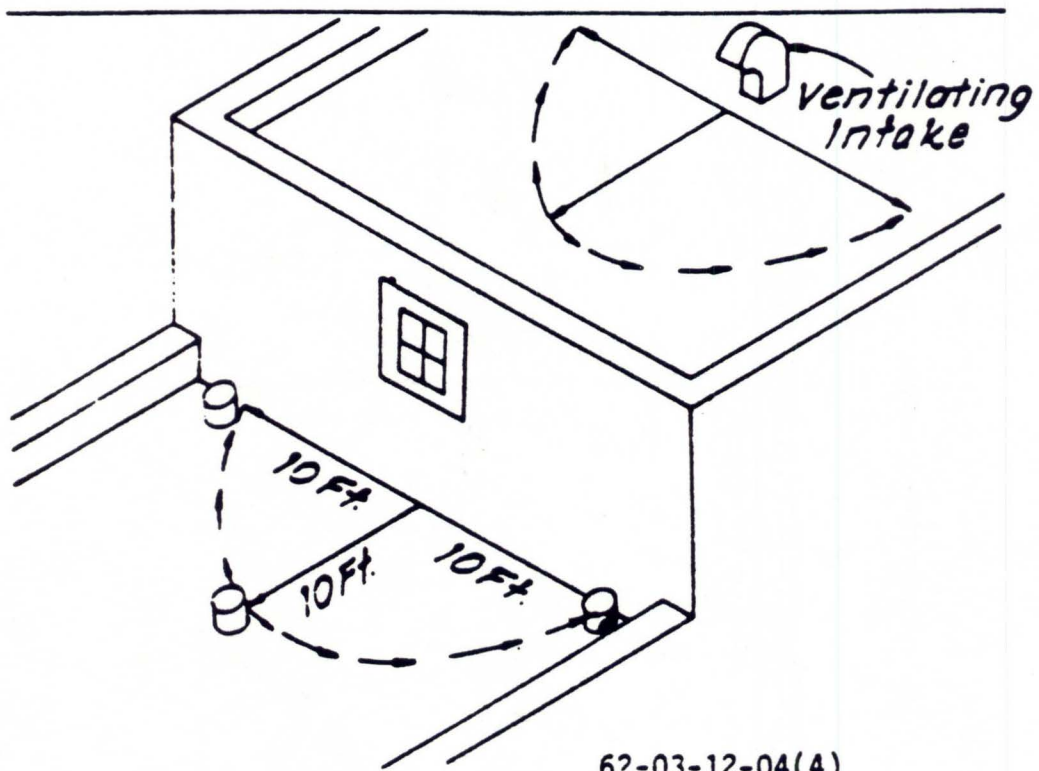
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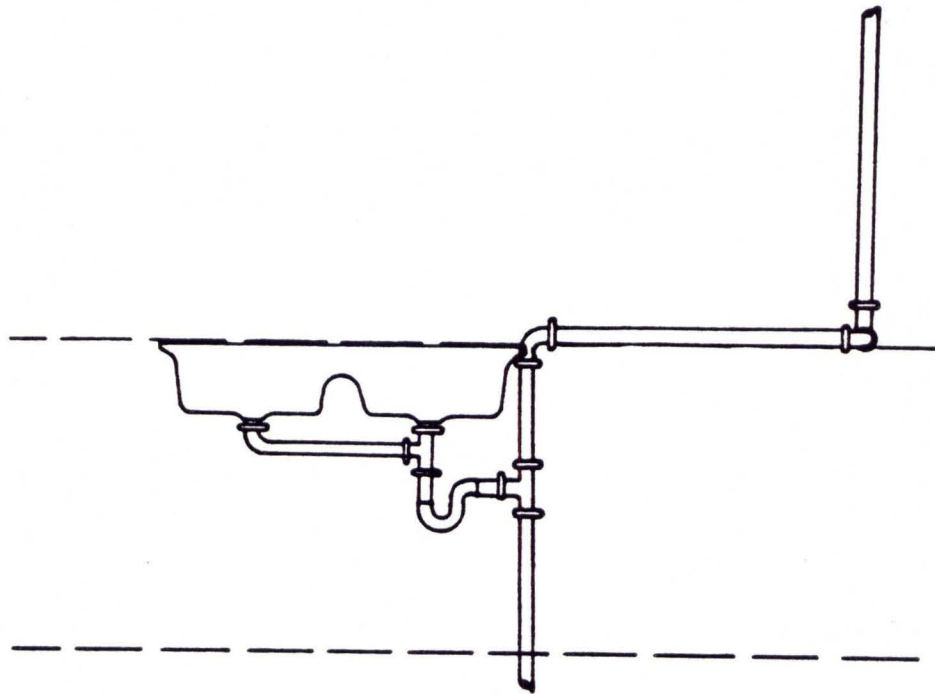
Areas and Circumference of Circles

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$\frac{1}{4}$.78540	.04909
$\frac{3}{8}$	1.1781	.11045
$\frac{1}{2}$	1.5708	.19635
$\frac{3}{4}$	2.3562	.44179
1	3.1416	.7854
$1\frac{1}{4}$	3.9270	1.2272
$1\frac{1}{2}$	4.7124	1.7671
2	6.2832	3.1416
$2\frac{1}{2}$	7.8540	4.9087
3	9.4248	7.0686
4	12.566	12.566
5	15.708	19.635
6	18.850	28.274
7	21.991	38.485
8	25.133	50.265
9	28.274	63.617
10	31.416	78.540

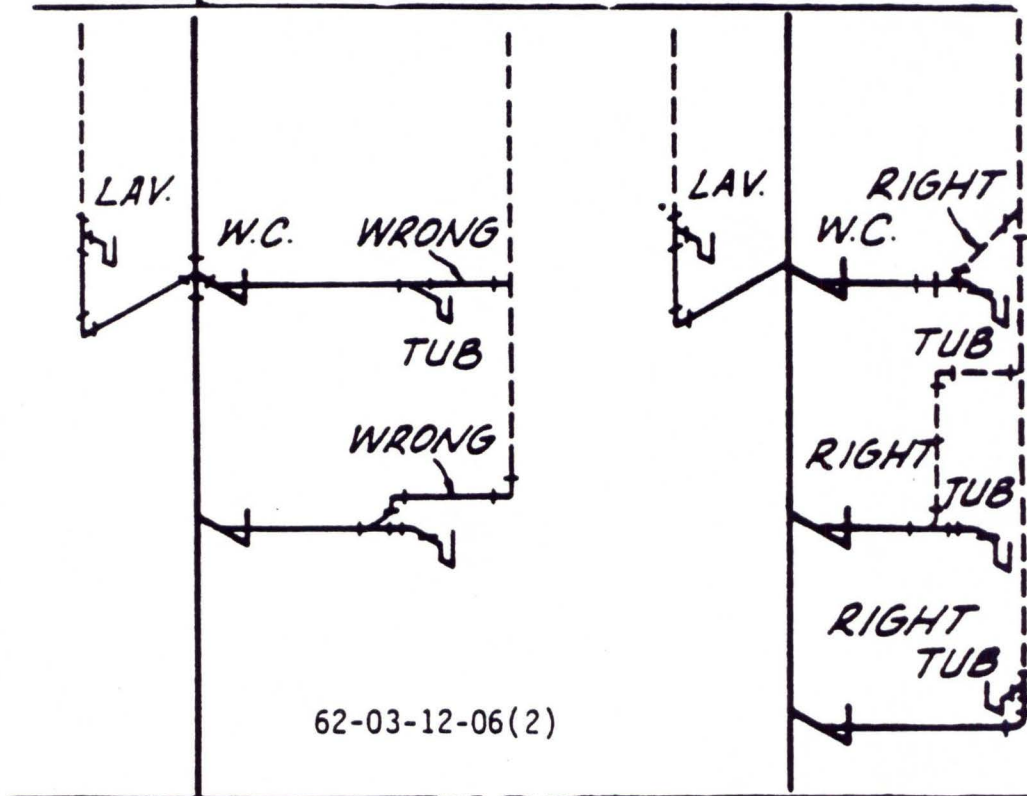


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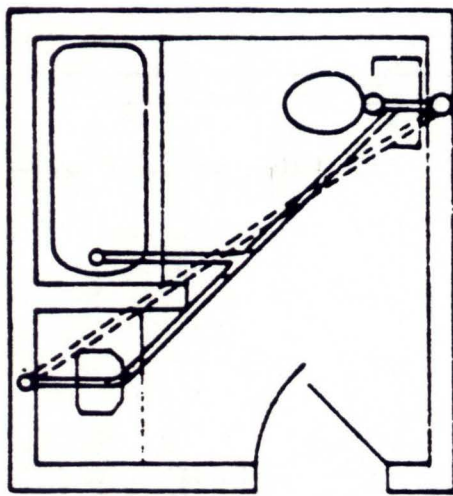




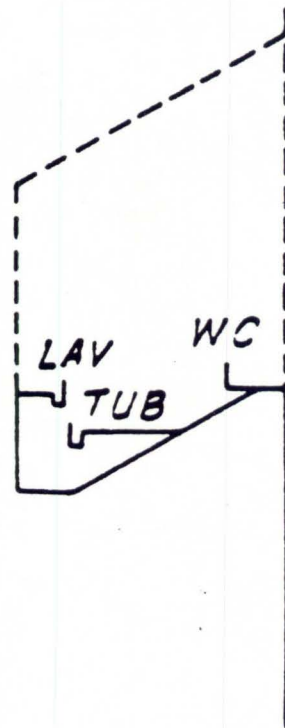
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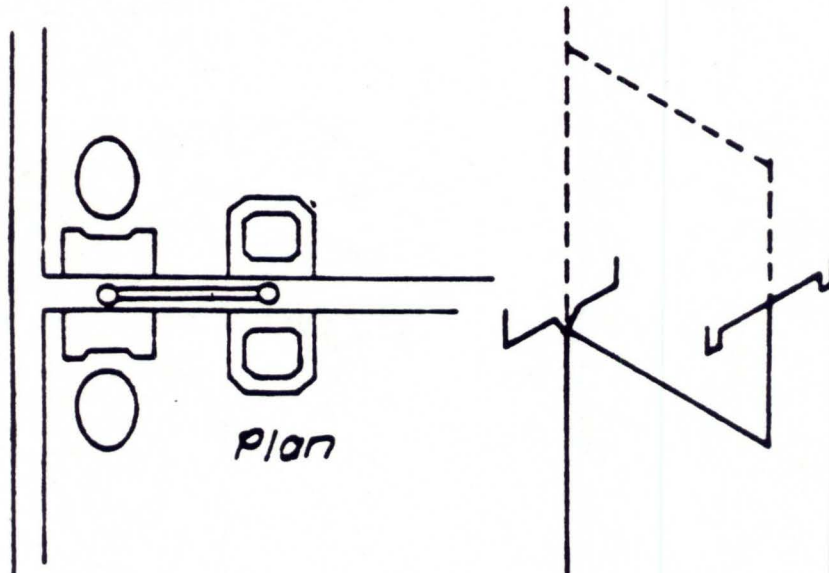
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Plan

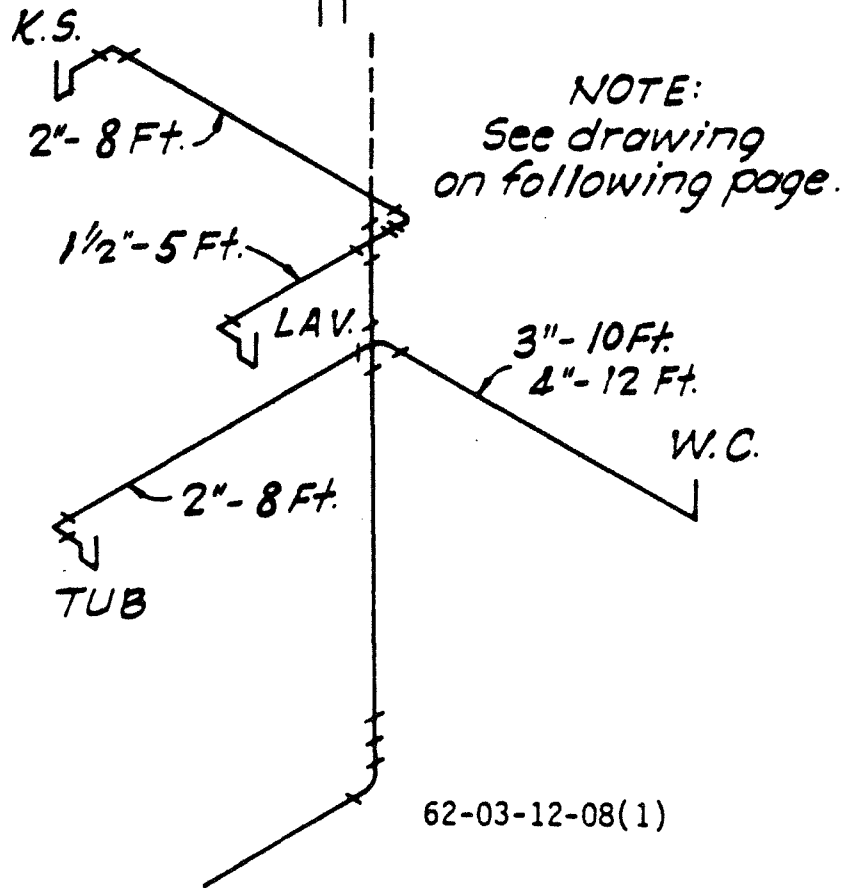
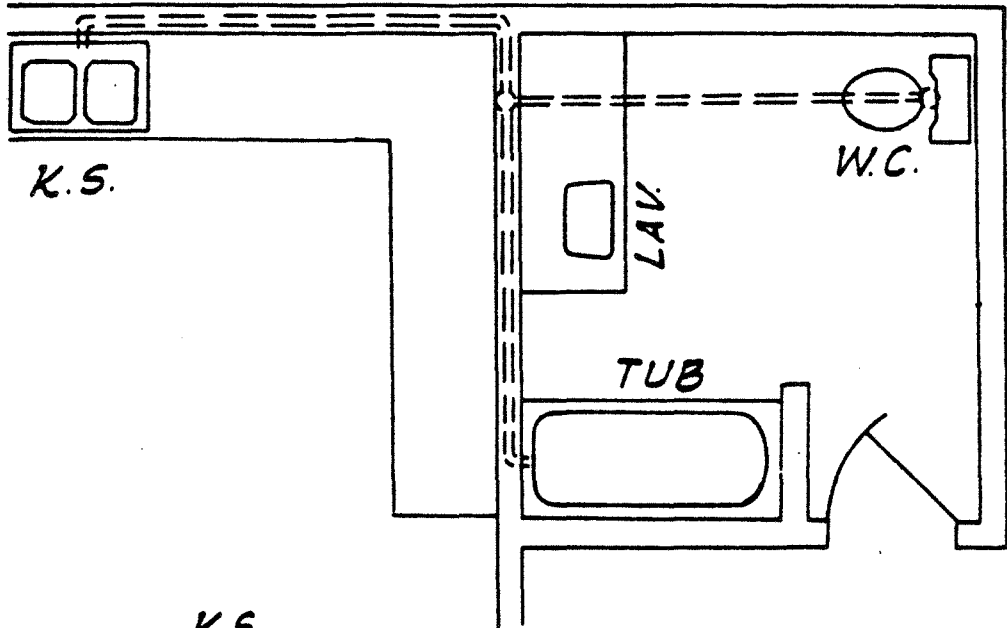


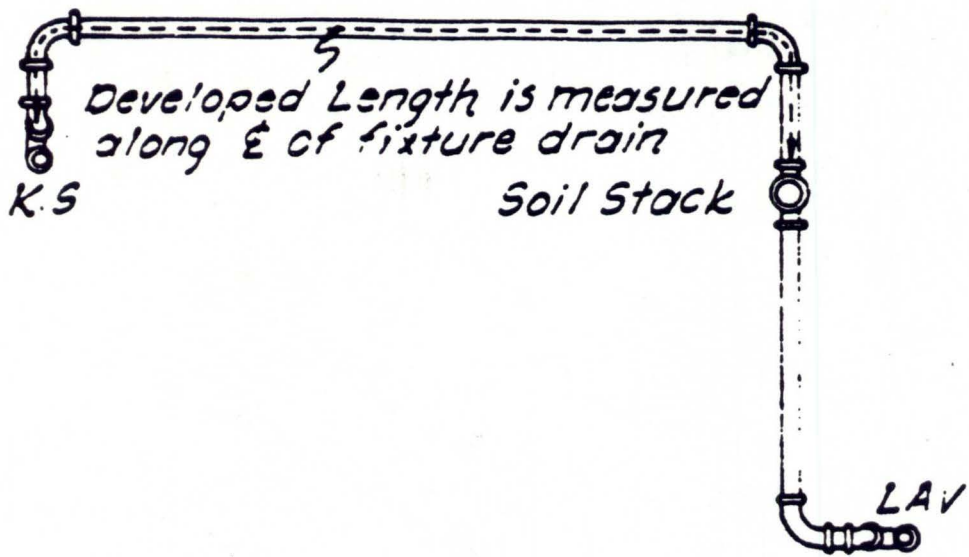
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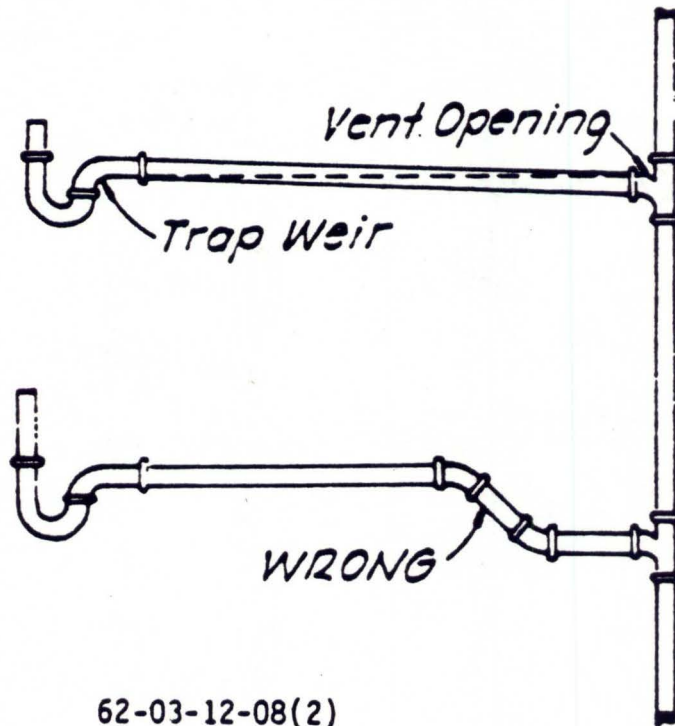
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62-03-12-07

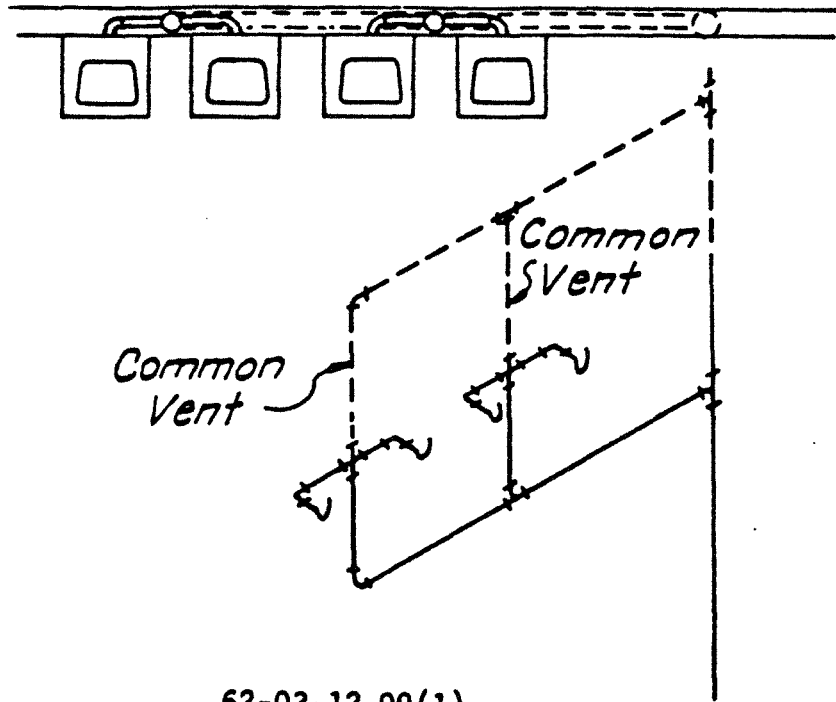




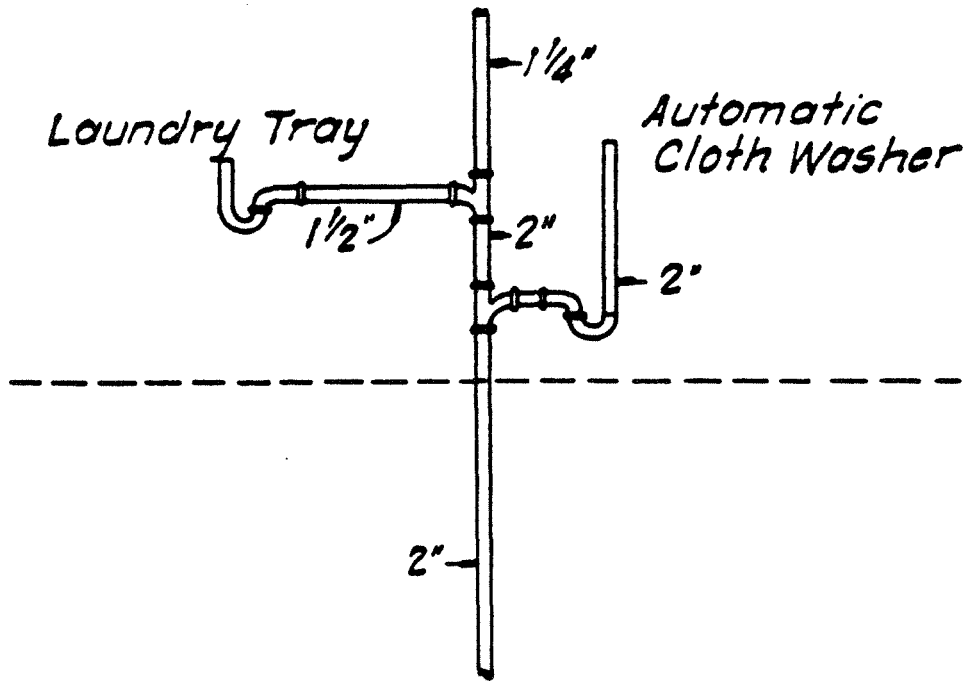
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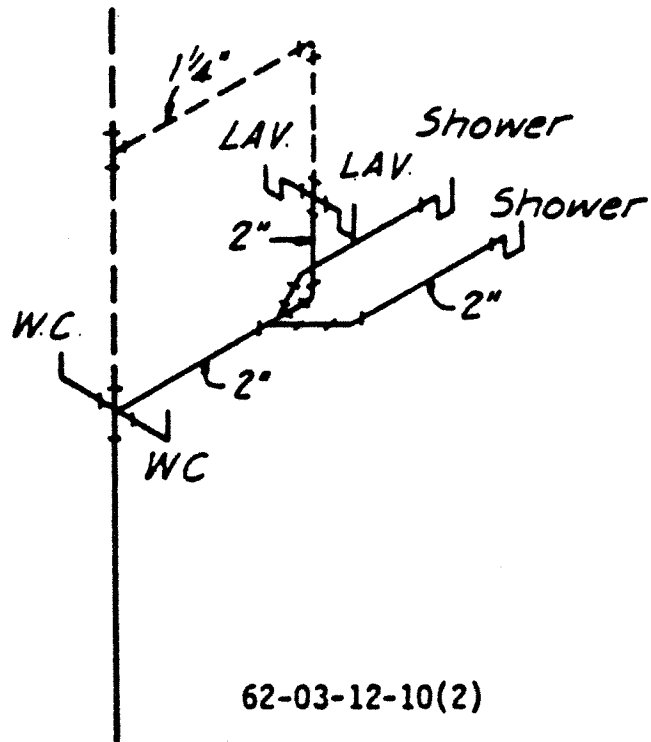
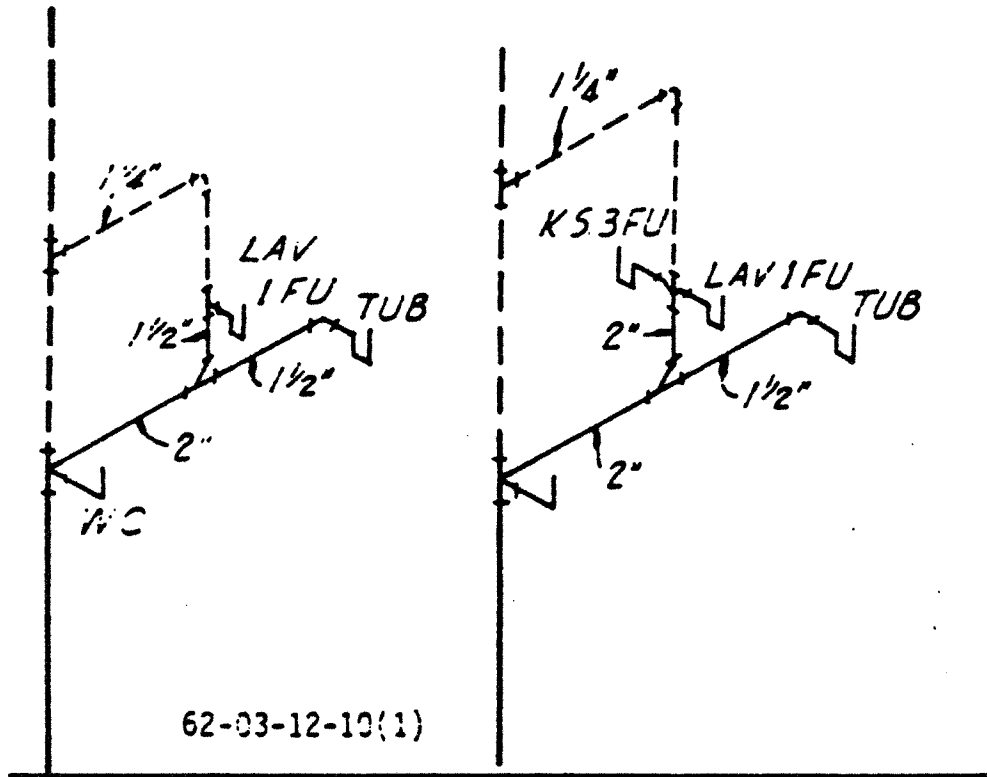
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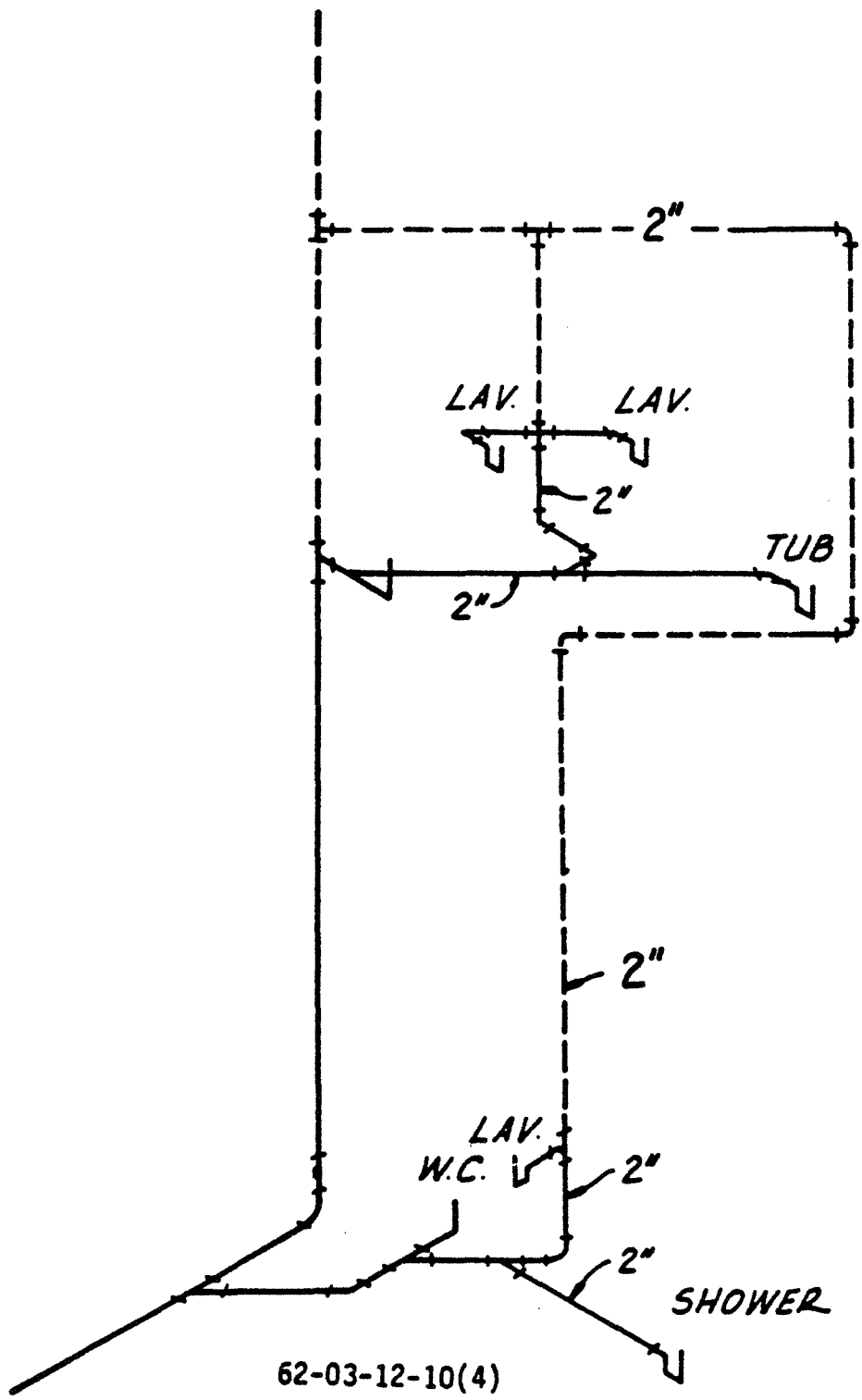


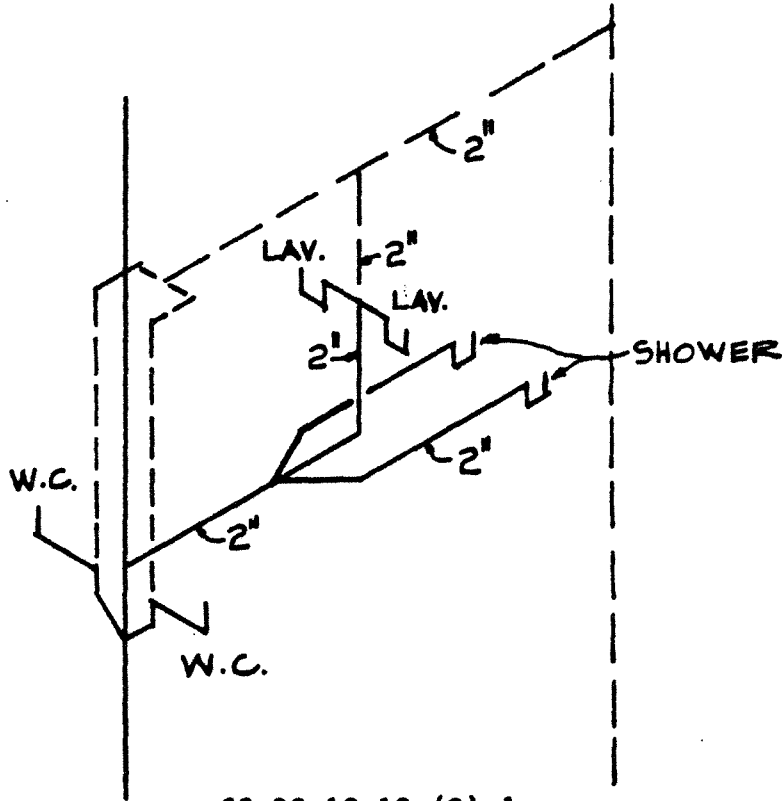
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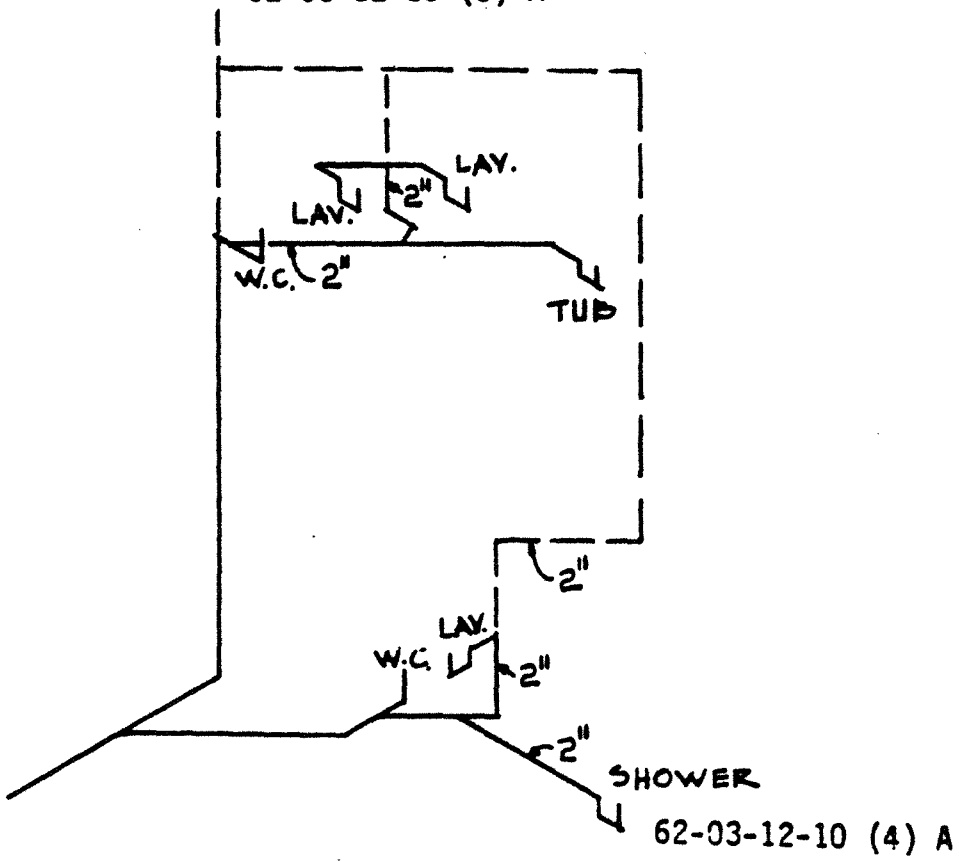
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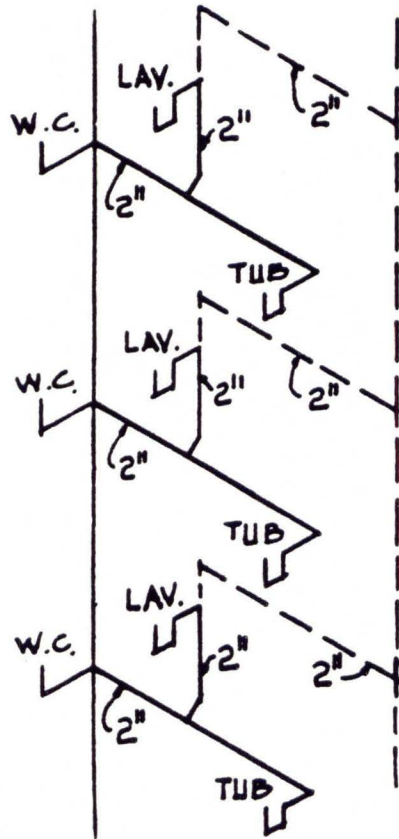




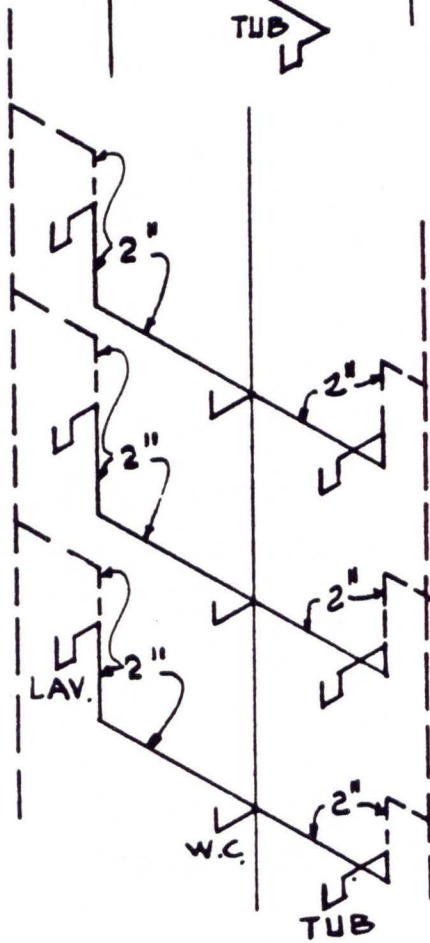
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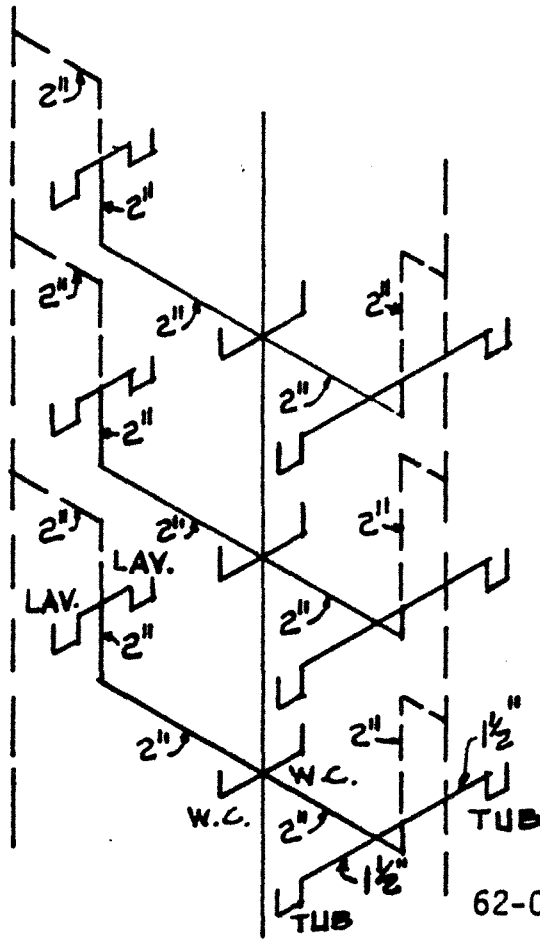
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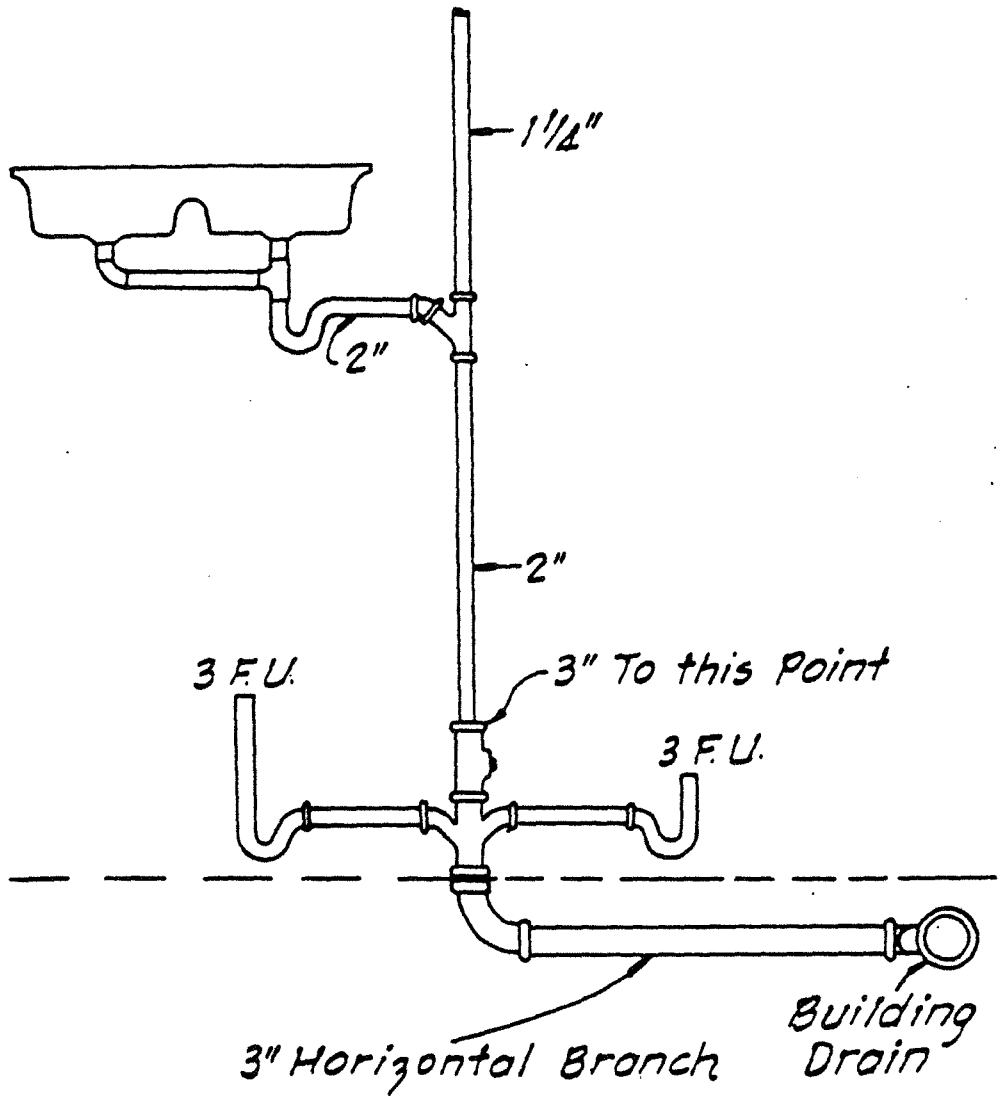
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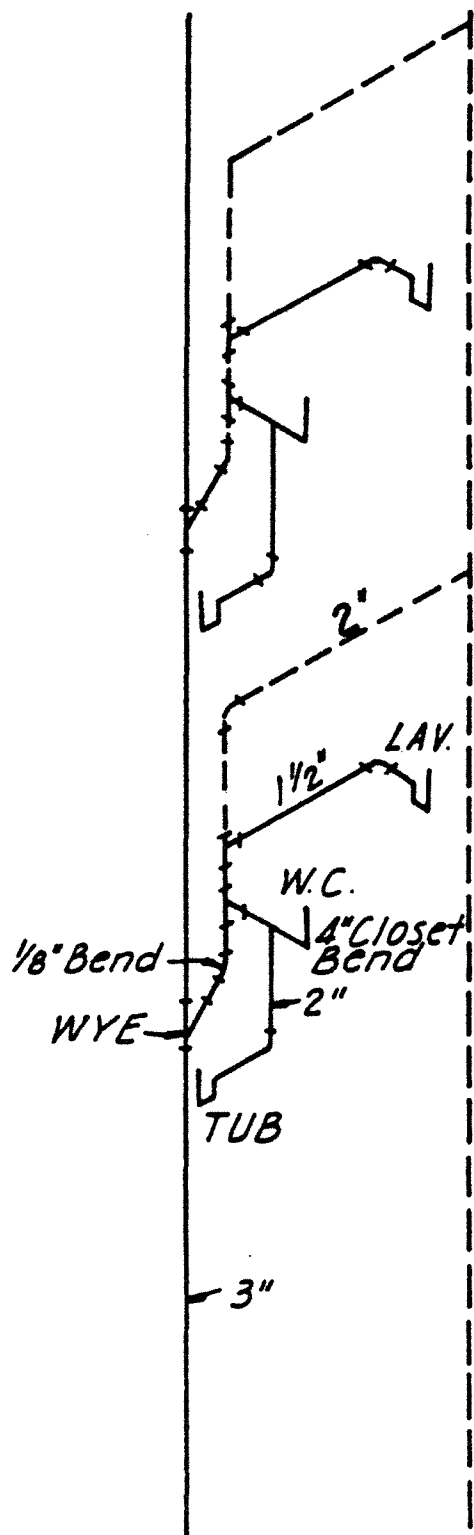
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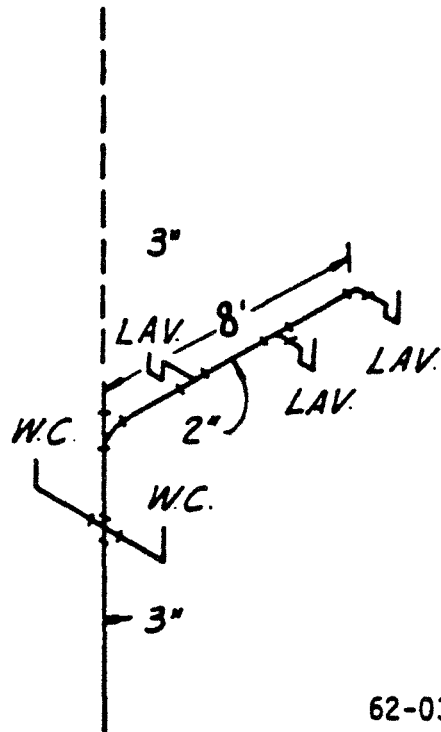
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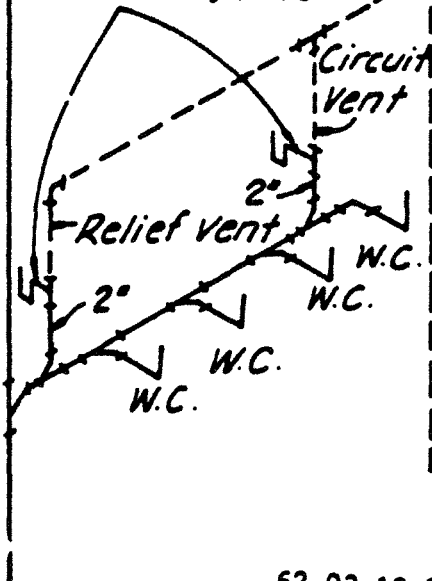


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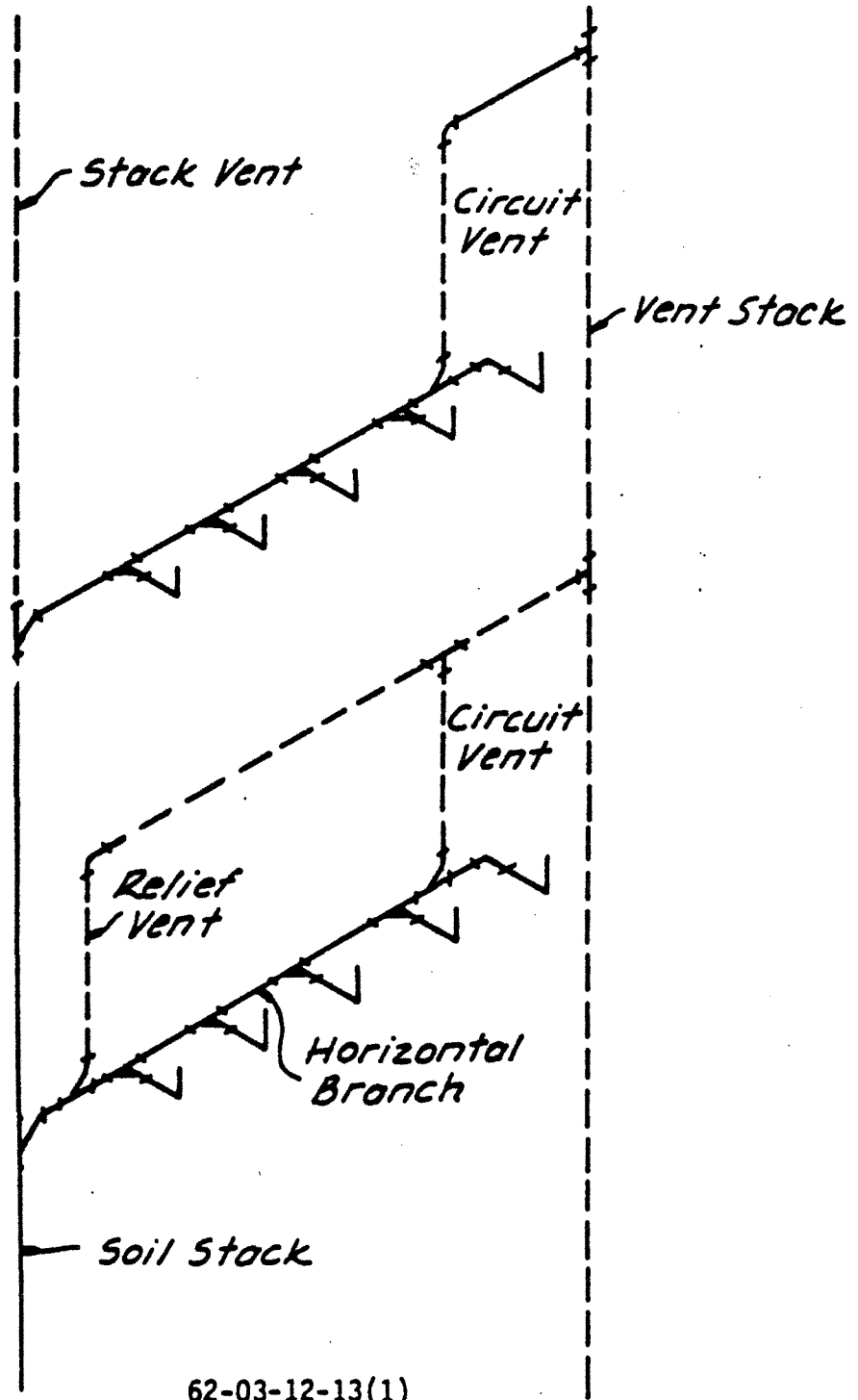


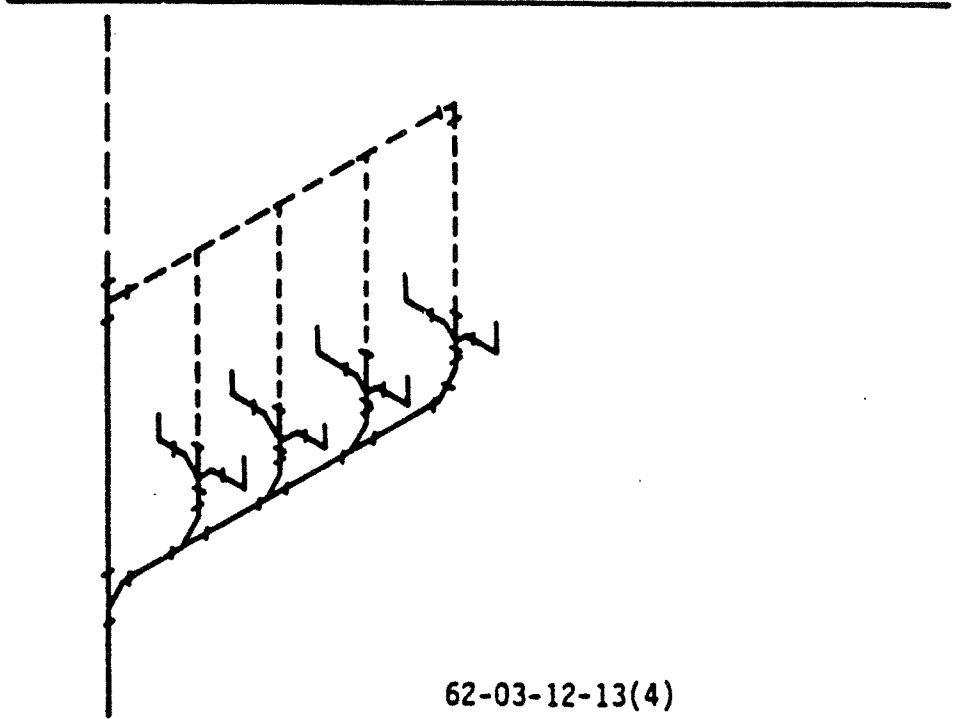
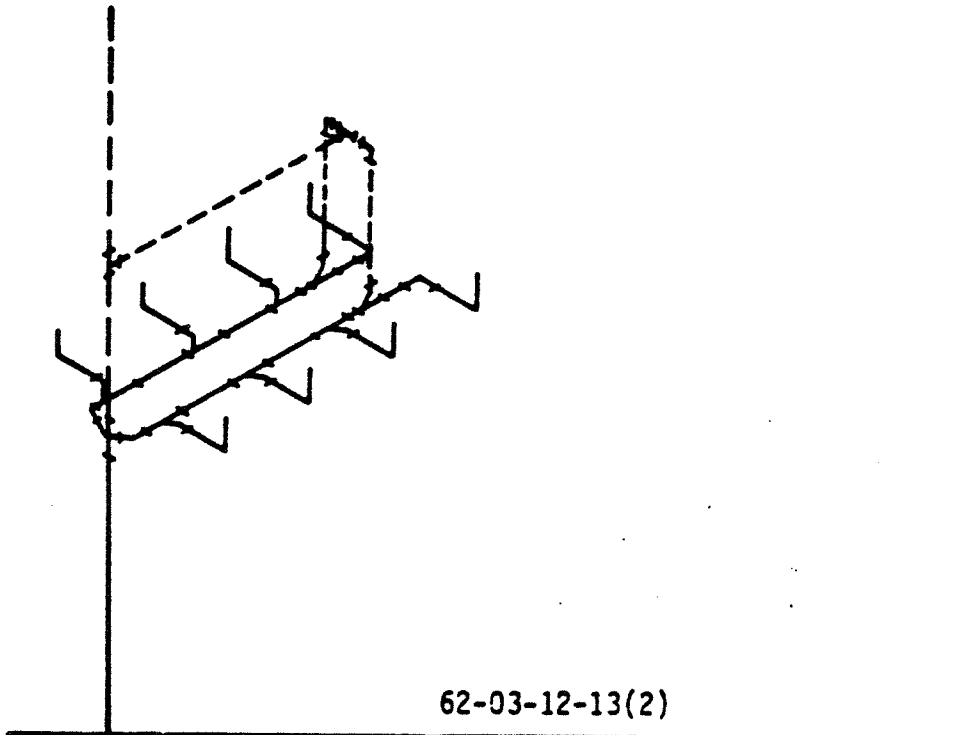
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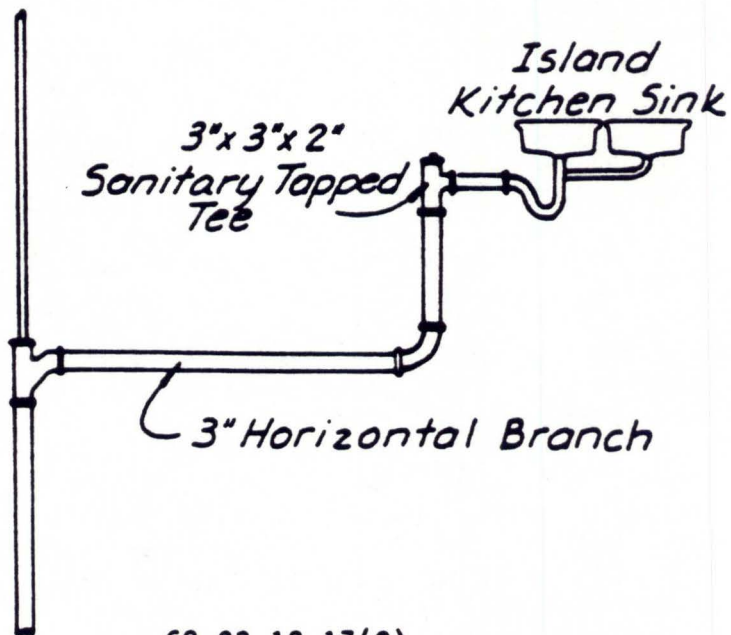
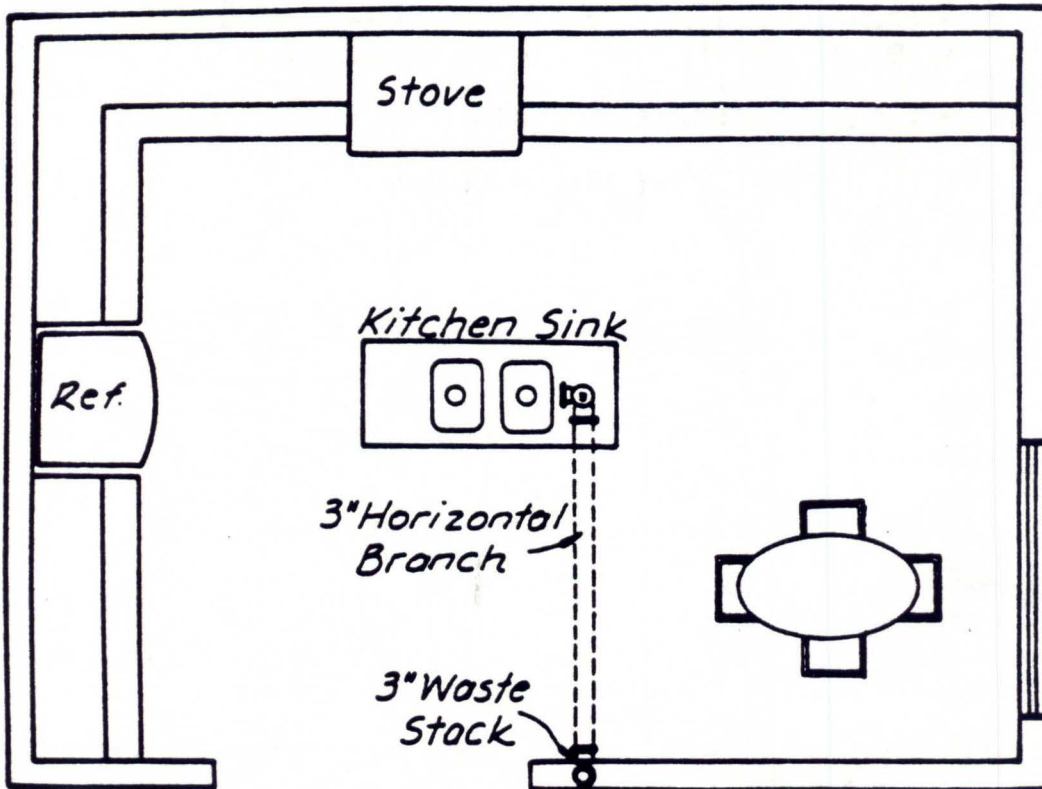
1-Two Fixture Unit May Connect to these Vents.



62-03-12-12(4)







62-03-12-17(2)

62-03-16-01. General provisions.

1. All sewage disposal systems shall be constructed, added to, or altered in accordance with this chapter. Where a public sewerage system is legally and economically available to the building to be served, the approving authority may require that sewage be discharged into that system.
2. "Sewage disposal" under this section means all private methods of collecting and disposing of domestic sewage including septic tanks, privies, chemical toilets, and any others.
3. All domestic sewage shall be disposed of by an approved method of collection, treatment, and effluent discharge. Domestic sewage or sewage effluent shall not be disposed of in any manner that will cause pollution of the ground surface, ground water, bathing area, lake, pond, watercourse, or create a nuisance. It shall not be discharged into any abandoned or unused well, or into any crevice, sink hole, or other opening either natural or artificial in a rock formation.
4. Where water under pressure is not available, all human body wastes shall be disposed of by depositing them in approved privies, chemical toilets, or such other installations acceptable to the approving administrative authority.
5. Water-carried sewage from bathrooms, kitchens, laundry fixtures, and other household plumbing shall pass through a septic or other approved sedimentation tank prior to its discharge into the soil or into a sand filter. Where underground disposal or sand filtration is not feasible, consideration will be given to special methods of collection and disposal.
6. The building contractor, owner, plumbing contractor, or disposal system installer are jointly responsible for compliance with this chapter.
7. Abandoned disposal systems shall be disconnected from the buildings, pumped out, and filled with earth.
8. No property shall be improved in excess of its capacity to properly absorb sewage effluent in the quantities and by the means provided in this code.
9. When there is insufficient lot area or improper soil conditions for adequate sewage disposal for the building or land use proposed, and the approving administrative authority so finds, no building permit shall be issued and no private sewage disposal shall be permitted. Where space or soil conditions are critical, no building permit shall be issued until engineering data and test reports satisfactory to the approving administrative authority have been submitted and

approved or a private sewage disposal system complying with the provisions of this article has first been installed.

10. Nothing contained in this chapter shall be construed to prevent the approving administrative authority from requiring compliance with higher requirements than those contained herein where such higher requirements are essential to maintain a safe and sanitary condition.
- ~~11. The approving authority for such systems shall be designated by the administrative authority.~~

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-02. Permits required.

1. Where sewage disposal systems are not available and construction is contemplated for a building of human occupancy or use or addition to or alteration of any existing sewage disposal system, the master plumber or septic tank sewer and water contractor shall, previous to beginning any construction, make application to the approving administrative authority for a written permit to make the desired installation.

Applications for such a permit shall be in a form required by the approving administrative authority and shall include complete plans and specifications for the desired installation. The approving administrative authority shall require percolation tests and other pertinent tests to be conducted under its supervision, such information to be made a part of the application.

2. When, upon review of the application, the approving administrative authority is satisfied that the proposed design is adequate, a written permit to proceed with construction shall be issued.
3. When, upon review of the application, the approving administrative authority is convinced that the proposed design is inadequate, or soil and geological conditions are such as to preclude safe and proper operation of the desired installation, a permit to proceed with construction shall be denied.
4. No installation shall be made without a written permit from the approving administrative authority.
5. The approving administrative authority may make inspections during construction to determine compliance with this chapter.

No part of any installation shall be covered until inspected and given final written approval by the approving administrative authority. Any part of an installation which has been covered prior to final approval shall be uncovered upon order of the approving administrative authority. Final written approval shall not be given until all pertinent data required has been submitted.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-03. Design of individual sewage system.

1. **Design.** The design of the individual sewage disposal system must take into consideration location with respect to wells or other sources of water supply, topography, water table, soil characteristics, area available, and maximum occupancy of the building.
2. **Type of system.** The type of system to be installed shall be determined on the basis of location, soil permeability, and ground water elevation.
3. **Sanitary sewage.** The system shall be designed to receive all sanitary sewage, including laundry waste, from the building. Drainage from ~~basement floor, footing,~~ footings or roofs shall not enter the system.
4. **Discharge.** The system shall consist of a septic tank discharging into either a subsurface disposal field or one or more seepage pits or into a combination of both, if found adequate as such and approved by the approving administrative authority.
5. **Ground water.** No plumbing fixture may be connected to any individual sewage disposal system where ground water may collect above the sewage disposal system causing a flooded condition, unless the elevation of the fixture trap is a sufficient height above the elevation of the finished grade of the ground in which the seepage pit or disposal field are installed to prevent backup.
6. **Alternate design.** Where soil conditions are such that neither of the systems mentioned in subsection 4 can be expected to operate satisfactorily, approval of an alternate design shall be secured from the approving administrative authority.
7. **~~The sewage floor~~ Sewage flow.** Design criteria for sewage flow according to the type of establishment is indicated in the following table.

SEWAGE FLOWS ACCORDING TO TYPE OF ESTABLISHMENT

Type of Establishment	Gallons Per Person Per Day (Unless Otherwise Noted)
Airports (per passenger)	5
Apartments-multiple family (per resident)	60
Assembly halls (per seat)	2
Bars (per customer)	2
Bathhouses and swimming pools	10
Bowling alleys (per lane)	75
Camps:	
Campground with central comfort stations	35
With flush toilets, no showers	25
Construction camps (semipermanent)	50
Day camps (no meals served)	15
Resort camps (night and day) with limited plumbing	50
Luxury camps	100
Churches (per sanctuary seat)	3-5
Churches with kitchens (per sanctuary seat)	5-7
Cottages and small dwellings with seasonal occupancy	50
Country clubs (per member present)	25
Dwellings:	
Boardinghouses	50
additional for nonresident boarders	10
Luxury residences and estates	150
Multiple family dwellings (apartments)	60
Roominghouses	40
Single family dwellings	75
Factories (gallons per person, per shift, exclusive of industrial wastes)	35
Hospitals (per bed space)	250
Hotels (per guest)	50
Institutions other than hospitals (per bed space) ...	100
Laundries, self-service (gallons per machine)	500
Mobile home parks (per space)	250
Motels (per bed space)	50
Picnic parks (sanitary waste only)	5
Picnic parks with bathhouses, showers, and flush toilets	10
Restaurants (toilet and kitchen wastes per patron) ..	10
Restaurants (kitchen wastes per meal served)	3
Restaurants additional for bars and cocktail lounges	2
Schools:	
Boarding	75
Day, without gyms, cafeterias, or showers	15
Day, with gyms, cafeteria, and showers	25
Day, with cafeteria, but without gyms,	

or showers	20
Service stations (per vehicle served)	10
Theaters:	
Movie (per auditorium seat)	5
Drive-in (per car space)	5
Travel trailer parks without individual water and sewer hookups (per space)	50
Travel trailer parks with individual water and sewer hookups (per space)	100
Workers:	
Construction (at semipermanent camps)	50
Day, at school and offices (per shift)	15

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-04. Location of individual sewage system.

1. The minimum lot size in which a private disposal system may be installed is twenty thousand square feet [1850.06 square meters].
2. Required lot size with private water system in which a private disposal system may be installed is twenty thousand square feet [1850.06 square meters].
3. The following table provides for the minimum distances that shall be observed in locating the various components of the disposal system.

	Shallow Well	Deep Well	Septic Tank	Distribution Box	Disposal Field	Seepage Pit	Dry Well	Property Line	Building
Bldg. Sewer	(50)	(50)	-	-	-	-	-	-	-
Septic Tank	(100)	(50)	-	5	10	10	10	(10) ¹	(10)
Distribution Box	(100)	(50)	5	-	5	5	5	(10)	(20)
Disposal Field	(100)	(50)	10	5	-	-	-	(10)	(20)
Seepage Pit	(100)	(50)	10	5	-	-	-	(10)	(20)
Dry Well	(100)	(50)	10	5	-	-	-	(10)	(20)
Shallow Well	-	-	(100)	(100)	(100)	(100)	(100)	-	-
Deep Well	-	-	(50)	(50)	(50)	(50)	(50)	-	-
Suction Line	-	-	(50)	(50)	(50)	(50)	(50)	-	-

¹May be closer to building when permission is given by the Administrative Authority.

- All sewage disposal systems shall conform with the following general principles regarding site:

Sewage disposal system shall be located at the lowest point on the premises consistent with the general layout topography and surroundings, including abutting lots. Locations at a higher elevation through employment of a forced system may be used with the specific permission of the approving administrative authority.

- No sewage disposal facilities shall be located on any watersheds of the public water supply system. Privies, septic tanks, and underground disposal means shall not be within two hundred feet [60.96 meters] measured horizontally from the high water level in the reservoir ~~on~~ or the banks of tributary streams when situated less than three thousand feet [914.4 meters] upstream from intake structures. Sewage disposal facilities situated beyond three thousand feet [914.4 meters] upstream from intake structures shall be located no less than one hundred feet [30.48 meters] measured horizontally from the high water level in the reservoir or the banks of the tributary streams. Prior to approval, the soil must prove satisfactory by the standard percolation test when underground disposal is used.

History: Amended effective August 1, 1981; October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-06. Capacity of septic tanks.

1. Liquid capacity. The liquid capacity of all septic tanks shall conform to the tables contained in subsection 7 of section 62-03-16-03 and this subsection as determined by the number of bedrooms or apartment units in dwelling occupancies and the occupant load or the number of plumbing fixture units as determined from the table in subsection 1 of section 62-03-11-04, whichever is greater in other building occupancies.

CAPACITY OF SEPTIC TANKS *

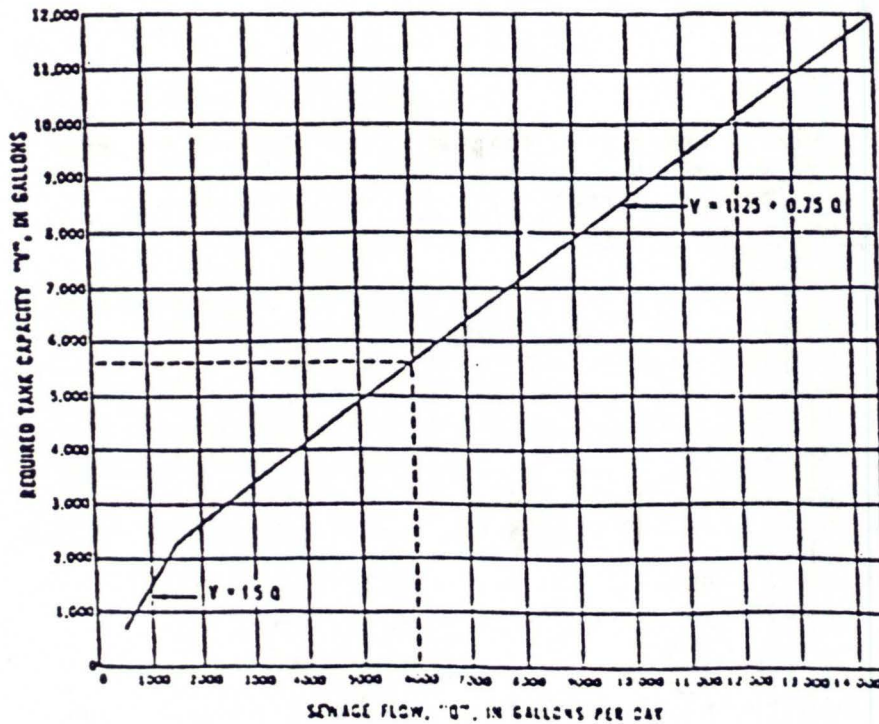
Single family dwellings-number of bedrooms	Multiple dwelling units or apartments-one bedroom each	Other uses; maximum fixture units served	Minimum septic tank capacity in gallons
1-3		20	1000
4	2 units	25	1200
5 or 6	3	33	1500
7 or 8	4	45	2000
	5	55	2250
	6	60	2500
	7	70	2750
	8	80	3000
	9	90	3250
	10	100	3500

Extra bedroom, 150 gallons each.

Extra dwelling units over 10, 250 gallons each.

Extra fixture units over 100, 25 gallons per fixture unit.

* NOTE: Septic tank sizes in this table include sludge storage capacity and the connection of domestic food waste disposal units without further volume increase.



2. Multiple compartments. In a tank of more than one compartment the inlet compartment shall have a capacity of not less than two-thirds of the total tank capacity.
3. Septic tank construction. Plans for all septic tanks shall be submitted to the approving administrative authority for approval. Such plans shall show all dimensions, reinforcing, structural calculations, and such other pertinent data as may be required.

Septic tanks shall be constructed of sound durable materials, not subject to excessive corrosion or decay and shall be watertight. Each such tank shall be structurally designed to

- withstand all anticipated earth or other loads and shall be installed level and on a solid bed.
4. **Septic tank materials.** See subsection 10 of section 62-03-03.1-03.
 5. **Concrete tanks.**
 - a. Concrete tanks shall have ~~the same size baffles and pump out openings as for steel tanks~~ baffles at least twelve inches [30.48 centimeters] in width or diameter at the point opposite the opening in the tank.
 - b. The tops shall have ~~a twenty four inch [60.96 centimeter]~~ an eighteen to twenty-four-inch [45.72 to 60.96-centimeter] manhole with handle to remove same ~~or be cast in three or four sections cemented in place.~~ In addition at least one inspection pump out opening must be installed on the top of tank. The pump out opening must be large enough to permit a pump out pipe to be inserted. Pump out pipe must extend to ground level and be capped.
 - c. The minimum thickness of the walls shall be two and three-fourths inches [6.99 centimeters].
 - d. The tops and bottoms shall be four inches [10.16 centimeters] thick unless placed under a driveway, then they shall be a minimum of six inches [15.24 centimeters].
 - e. All tank walls and bottoms shall be reinforced with "Road Mesh".
 - f. The tops shall have three-eighths inch [9.53 millimeter] steel reinforcing on six-inch [15.24-centimeter] centers.
 - g. These tanks must be ~~waterproof~~ watertight.
 6. **Depth of septic tank.** ~~The top of the septic tank may be brought to within forty eight inches [121.92 centimeters] of the finished grade. Where a greater depth is required the access manhole shall be extended to the finished grade or the manhole shall have a concrete marker at grade~~ Where septic tanks are installed above frostline, precautions must be taken to prevent the septic tank from freezing.
 7. **Service limited.** No septic tank shall serve more than one property unless authorized by the ~~approving~~ administrative authority.
 8. **Disposal of effluent.** The effluent from all septic tanks shall be disposed of underground by subsurface irrigation or seepage pits or both.

History: Amended effective July 1, 1985; October 1, 1989.
General Authority: NDCC 43-18-09
Law Implemented: NDCC 43-18-09

62-03-16-07. Distribution box.

1. Use. ~~Distribution boxes are not recommended for use with individual sewage disposal systems.~~ A distribution box may be used when more than one line of absorption field or more than one seepage pit is used.
2. When required. A distribution box shall be required when more than one line of subsurface irrigation or more than one seepage pit is used.
3. Connection. Each lateral line shall be connected separately to the distribution box and shall not be subdivided.
4. Invert level. ~~The invert of all distribution box outlets shall be at the same level and approximately two inches [5.08 centimeters] above the bottom of the box.~~ The inlet invert shall be at least one inch [2.54 centimeters] above the invert of the outlets. The size of the distribution box shall be sufficient to accommodate the number of lateral lines.
5. Watertight. The distribution box shall be of watertight construction arranged to receive the septic tank effluent sewer and with an outlet or connecting line serving each trench or seepage pit.
6. Baffle. A baffle at least six inches [15.24 centimeters] high and twelve inches [30.48 centimeters] long shall rest on the bottom of the box and be placed at right angles to the direction of the incoming tank effluent sewer and twelve inches [30.48 centimeters] in front of it.
7. When required. A distribution box for septic effluent disposal shall be required when more than one line of subsurface irrigation or more than one seepage pit is used. Each irrigation line shall be connected separately to the distribution box and shall not be subdivided.
8. Inspection. The sides of the box should extend to within a short distance of the ground surface to permit inspection, and shall have a concrete marker at grade.

History: Amended effective October 1, 1989.
General Authority: NDCC 43-18-09
Law Implemented: NDCC 43-18-09

62-03-16-08. Seepage pit.

1. Seepage pits may be used either to supplement the subsurface disposal field or in lieu of such field where conditions favor the operation of seepage pits, as may be found necessary and approved by the approving administrative authority.
2. Deep seepage pits penetrating ground water are prohibited.
3. Where seepage pits are used for septic tank effluent disposal, the number, diameter, and depth of the pits shall be determined after percolation tests have been made to ascertain the porosity of the soil.
4. The excavation for a seepage pit shall be greater in diameter than the outside diameter of the vertical sidewalls to allow for the footing.
5. The annular space between the outside of the vertical walls and the excavation shall be backfilled with broken stone, coarse gravel, or other suitable material.
6. Seepage pits shall be constructed with the bottom being open with an outer ring, or footing, to support the sidewalls.
7. The sidewalls can be made of stone, cement or cinder blocks, or brick laid in cement mortar for strength, with openings at sufficient intervals to permit the septic tank effluent to pass out through the wall to the surrounding porous soil.
8. All septic tank tops and pit covers shall be of sufficient strength to carry the load imposed. Seepage pit covers shall be at least as required in subsections 9 and 10.
9. A pit cover shall be an approved precast, reinforced concrete slab of two thousand five hundred pounds per square inch [1133.97 kilograms per 6.45 square centimeters] minimum compressive strength, not less than five inches [12.7 centimeters] thick and designed to support an earth load of not less than four hundred pounds per square foot [181.44 kilograms per 929.03 square centimeters]. Each such cover shall extend not less than three inches [7.62 centimeters] beyond the sidewalls of the pit, shall be provided with a minimum six-inch [15.24-centimeter] inspection hole with pipe extended to the surface, and provided with a six-inch [15.24-centimeter] cast iron stand pipe with cleanout to grade.
10. The top shall be at least thirty-six inches [91.44 centimeters] below finished grade, except where less is permitted by the approving administrative authority.
11. Where field installed slab are used, the following table indicates the requirements.

DESIGN OF SEEPAGE PIT COVERS

Pit Diameter	Pit Wall Thickness	Cover Thickness	Cover Weight	Reinforcing Steel Required in Two Perpendicular Directions
5 ft	4"	5"	1230 lb	# 5 @ 10 1/2"
6 ft	8"	5"	1770 lb	# 5 @ 9"
8 ft	8"	6"	3780 lb	# 5 @ 7 1/2" c/c
10 ft	8"	8"	7850 lb	# 5 @ 6 1/2" c/c

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-09. Absorption trenches.

1. Design. Absorption trenches shall be designed and constructed on the basis of the required effective percolation area.
2. Filter material. The filter material shall cover the tile and extend the full width of the trench and shall be not less than six inches [15.24 centimeters] deep beneath the bottom of the tile, and two inches [5.08 centimeters] above the top of the tile. The filter material may be washed ~~gravel, rock or crushed stone, slag, or clean bank-run gravel~~ ranging in size from one-half to two and one-half inches [12.7 to 63.5 millimeters]. The filter material shall be covered by untreated paper as the laying of the pipe drain proceeds.
3. Absorption field. The size and minimum spacing requirements for absorption fields shall conform to those given in the table in subsection 4.
4. Length. The maximum length of lateral shall not exceed one hundred feet [30.48 meters].

SIZE AND SPACING FOR DISPOSAL FIELDS

Width of trench at bottom (Inches)	Recommended depth of trench (Inches)	Spacing tile lines * (Feet)	Effective absorption area per lineal foot of trench (Square feet)
18	18 to 30	6.0	1.5
24	18 to 30	6.0	2.0

30	18 to 36	7.6	2.5
36	24 to 36	9.0	3.0

* A greater spacing is desirable where available area permits.

5. Absorption lines. Absorption lines shall be constructed of four-inch [10.16-centimeter] pipe of open jointed or horizontally split or perforated clay tile, perforated asbestos cement, perforated bituminized fiber or plastic pipe conforming to Commercial Standard CS 228-61 as defined by ASTM D-2852-69T and Federal Specification #LP-001221, or open jointed cast iron soil pipe. In the case of clay tile or open jointed cast iron soil pipe, the sections shall be spaced not more than one-half inch [12.7 millimeters], and the upper half of the joint shall be protected by asphalt-treated paper while the piping is being covered.
6. Grade. The trench bottom shall be uniformly graded to slope from a minimum of two inches [5.08 centimeters] to a maximum of four inches [10.16 centimeters] per one hundred feet [30.48 meters].

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-13. Chemical toilets.

1. All requests for permission to erect and use chemical toilets shall be approved by the approving administrative authority.
2. Where approved by the approving administrative authority, chemical toilets shall be as follows:

A chemical toilet consists of a toilet seat connected by a metal hopper to a metal tank containing chemicals, usually sodium hydroxide. All connections to the toilet seat and the tank shall be watertight. A rod shall extend above the floor of the room to operate the agitator in the chemical tank.

3. A supply of the chemical shall be available in a closed container for periodic additions to the toilet.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-14. Privies.

1. Privies and privy vaults. All requests for permission to erect and use privies shall be approved by the approving administrative authority.
2. General specifications for the design and construction of a privy. A privy pit may be constructed by boarding a square or rectangular pit to prevent earth caving or by providing a watertight structure in the pit. The pit shall provide a minimum capacity of sixty cubic feet [1.70 cubic meters]. The pit should be lined with boards and a privy building shall be placed over the pit. The floor of this building shall be of wood or concrete with the privy seat of wood. A vent located adjacent to the seat shall extend from the pit to a point above the roof of the building. The seat shall be provided with a cover which shall be self-closing.

All openings in the building shall be screened to prevent the entrance of flies. Earth shall be mounded on all sides of the building to prevent the entrance of rats to the pit. The privy door shall be self-closing.

3. Removable cans. When removable cans are used in a privy, they shall be placed in watertight vaults and provision made for removing the seat so the cans can be moved for disposal of the contents in a manner acceptable to the approving administrative authority. The privy building shall comply with the above specifications for a pit privy building.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-17-04. Piping materials. Piping from well to inside of dwelling shall be as in section 62-03-10-10, or may be plastic, as follows:

1. Polyvinyl chloride pipe and fittings shall be properly labeled and installed in conformance with regulation 2.5.6 for Pressurized Pipe and Fittings and Commercial Standard CS-207 for scheduled series pipe.
 - a. Pipe and fittings shall be marked to be shown in compliance with the above standards.
 - b. The seal of approval of the national sanitation fittings foundation laboratory shall be considered evidence in compliance with the above standards.
2. Acrylonitrile-butadiene-styrene pipe and fittings shall be properly labeled and installed in conformance with Commercial Standards Regulation CS-254.

- a. Pipe and fittings shall be marked to be shown in compliance with the above standards.
 - b. The seal of approval of the national sanitation ~~fittings~~ foundation laboratory shall be considered evidence in compliance with the above standards.
3. Polyethylene pipe and fittings shall be properly labeled and installed in conformance with Commercial Standards Regulation CS-255.
- a. Pipe and fittings shall be marked to be shown in compliance with the above standards.
 - b. The seal of approval of the national sanitation ~~fittings~~ foundation laboratory shall be considered evidence in compliance with the above standards.
4. All pipe and fittings shall withstand the pressure requirement imposed by combined static and pressure-head or a minimum rated working pressure of one hundred pounds [45.36 kilograms].

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-17-15. Cross-connection.

1. There shall be no cross-connection between an individual water supply system and other individual or public water supply system.
2. No water supply shall serve more than one property unless authorized by the approving administrative authority.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-04-03-02. Alternate materials and methods.

1. Existing buildings. In existing buildings or premises in which plumbing installations are to be altered, renovated or replaced, such new materials and work shall meet or exceed the provisions of this article. Where the administrative authority shall find that the full performance of bringing such work into compliance with all requirements of this article would result in exceptional undue hardship by reason of excessive structural or mechanical difficulty, or impracticability, a deviation may be granted by the

administrative authority only where, and to the extent, necessary to ameliorate such exceptional or undue hardship, and only where, and to the extent, such deviation can be granted without impairing the intent and purpose of this article. A record, open to inspection by the public shall be maintained by the administrative authority of each and every deviation allowed under the terms of this subsection.

2. **Approval.** The administrative authority may approve the use of fixtures, appurtenances, materials and methods of a type not conforming with the requirements of, nor expressly prohibited by, this article after determination that such fixture, appurtenance, material or method is of such design or quality, or both, as to appear to be suitable, safe and sanitary for the use for which it is intended. A record of such instances shall be maintained and shall be available to the public. Action shall be taken within reasonable time to amend this article so as to either authorize or prohibit such use. Any person desiring to install or use a fixture appurtenance, material, or method of a type not conforming with the requirements of, nor expressly prohibited by, this article shall, prior to such installation or use, submit to the administrative authority such proof as may be required to determine whether such fixture, appurtenance, material, or method is of such design or quality, or both, as to appear to be suitable, safe, and sanitary for the use for which it is intended. In the event the administrative authority determines that it does appear to be suitable, safe, and sanitary for the use for which it is intended, the administrative authority may then permit such use; provided, that the manner of installation or use is otherwise in accordance with this article. In view of the special nature of these cases, such use shall be subject to periodic inspection by the administrative authority and such fixture, appurtenance, material, or method shall, upon order, be discontinued or removed if such inspection indicates it is unsuitable, unsafe, insanitary, or contrary to the provisions of this or other applicable codes.
3. **Tests.** When there is insufficient evidence to verify claims for alternate materials the administrative authority may require as proof of suitability tests of compliance by an approved agency at the expense of the applicant.
4. **Test procedure.** Tests shall be made in accordance with generally recognized standards; but in the absence of such standards, the administrative authority shall specify the test procedure.
5. **Repeated tests.** The administrative authority may require tests to be repeated if, at any time, there is reason to believe that an alternate material no longer conforms to the requirements on which its approval was based.

6. Limitation of lead content. Pipe and fittings used in the potable water supply system may not contain more than eight percent lead.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18.1-03

Law Implemented: NDCC 43-18.1-04

62-04-04-02. Types of joints for piping materials.

1. Threaded. Every threaded joint shall conform to the American National Taper Pipe Thread, ANSI B2.1-1960. All burrs shall be removed. Pipe ends shall be reamed or filed out to size of bore, and all chips shall be removed. Pipe joint compound shall be used only on male threads.
2. Soldered. Every soldered joint for tube shall be made with approved fittings. Surfaces to be soldered Joints in copper tubing shall be made by the appropriate use of approved brass or copper fittings. The surface to be joined by soldering shall be cleaned bright by manual or mechanical means. The joints shall be properly fluxed and made with an approved noncorrosive paste-type flux and made up with approved solder. Joints in copper water tube shall be made by the appropriate use of approved cast brass or wrought copper fittings, properly soldered together For potable water used in copper, brass, or wrought copper fittings must be made with a solder and flux containing not more than two-tenths percent lead. Soldered joints may not be used for tube installed underground.
3. Flared. Every flared joint for annealed-temper copper water tube shall be made with fittings meeting approved standards. The tube shall be reamed and then expanded with a proper flaring tool.
4. Brazed. Brazed joints shall be made by first cleaning the surfaces to be joined down to the base metal, applying flux approved for such joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.
5. Slip. Every slip joint shall be made using approved packing or gasket material, or approved ground joint brass compression rings. Ground joint brass connections which allow adjustment of tubing but provide a rigid joint when made up shall not be considered as slip joints.
6. Expansion. Every expansion joint shall be of approved type and its material shall conform with the type of piping in which it is installed.

7. Split couplings. Couplings made in two or more parts and designed for use with plain end or grooved pipe or approved fittings and with compression gaskets may be used for hot and cold water piping and conductors and leaders. Each manufacturer must have the manufacturer's complete joining assembly approved for the intended use by one of the organizations listed in chapter 62-04-03 or by the administrative authority.

History: Amended effective October 1, 1989.

General Authority: NDCC 43-18.1-03

Law Implemented: NDCC 43-18.1-04

TITLE 67
Public Instruction, Superintendent of

AUGUST 1989

STAFF COMMENT: Article 67-04 contains all new material but is not underscored so as to improve readability.

ARTICLE 67-04

MILITARY INSTALLATIONS

Chapter
67-04-01 Appointment of School Board Members

CHAPTER 67-04-01
APPOINTMENT OF SCHOOL BOARD MEMBERS

Section
67-04-01-01 Appointment of School Board Members on
Military Installation School District

67-04-01-01. Appointment of school board members on military installation school district.

1. The superintendent of public instruction shall invite persons living in a school district formed pursuant to the provisions of North Dakota Century Code section 15-27.5-01 to submit applications for appointment of school board members prior to March first of each year.
2. The superintendent of public instruction shall ask applicants to provide information about their qualifications for and

interest in an appointment to the school board, and such other information as the state board of public school education may require, in or attached to a letter of application. The information may be used by the superintendent of public instruction and the state board of public school education in their deliberations for appointment of school board members.

3. The superintendent of public instruction shall forward copies of the letters of application and any attachments to representatives of parent groups on the military installation and to the commander of the military installation for their review.
4. The representatives of parent groups shall submit recommendations regarding applicants for school board membership to the superintendent of public instruction and the commander of the military installation prior to April first.
5. After consulting with the commander of the military installation which has formed the school district about the appointments to be made that year, the superintendent of public instruction shall submit a list of recommended applicants, along with a list of all the applicants, and information obtained from the applicants and the commander of the military installation, to the state board of public school education.
6. The state board of public school education shall meet prior to May first of each year to consider approval of applicants for appointment of school board members from school districts formed on military installations.
7. Within fifteen days of the approval of applicants by the state board of public school education, the superintendent of public instruction shall announce the appointment of school board members for that year and the terms of the appointment for each member. The announcement of appointments must be made prior to May first of each year.
8. In making the initial appointment of school board members from newly formed school districts formed on military installations, if complying with the procedures in accordance with the date limitations of this section is an impossibility, the superintendent of public instruction and the state board of public school education shall comply with all of the procedures provided by this section in a reasonable manner, in spite of the date limitations.

History: Effective June 7, 1989.

General Authority: NDCC 28-32-02, 15-27.5-02

Law Implemented: NDCC 15-27.5-01, 15-27.5-02

TITLE 69
Public Service Commission

DECEMBER 1989

69-10-05-01. Applicability of chapter. The requirements of this chapter apply to any ~~producer~~ operator commingling production from two or more oil or gas wells with diverse ownership and measuring the production from each well by meters approved by the industrial commission as provided in North Dakota Century Code section 38-08-20. The requirements of this chapter apply only to the metering systems used to measure commingled production from wells of diverse ownership for the purpose of allocation.

History: Effective July 1, 1986; amended effective December 1, 1989.

General Authority: NDCC 28-32-02, 64-02-03

Law Implemented: NDCC 64-02-15.1

69-10-05-01.5. Definitions. In this chapter:

1. "Average meter factor" means the numerical result obtained by dividing the sum of three consecutive meter factors by the number three, except when the public service commission grants a variance under section 69-10-05-18.
2. "Gas meter test calibration method" means testing a pressure differential recorder to determine if the accuracy of its recording is within the tolerances under section 69-10-05-15.
3. "Meter factor" means the numerical result obtained by dividing the actual volume of crude oil passed through the meter during proving by the volume registered by the meter.
4. "Meter proving" means the procedure to determine the relationship between the true volume of crude oil measured by the meter and the volume indicated by the meter.

5. "Operator" means anyone duly authorized for the development or operation of an oil or gas well.
6. "Primary elements used for gas measurement" means the meter tube, orifice plate-holding and positioning device, orifice plate, pressure taps, and straightening vanes.
7. "Secondary element used for gas measurement" means the pressure differential recorder.

History: Effective December 1, 1989.

General Authority: NDCC 28-32-02, 64-02-03

Law Implemented: NDCC 64-02-15.1

69-10-05-02. Inventory filing requirements. Within ~~sixty~~ thirty days of ~~July + December 1, 1986~~ 1989, an inventory of the metering equipment used to measure production from crude oil or gas wells with diverse ownership shall subject to this chapter must be filed with the department of weights and measures of the public service commission by each producer or meter owner operator. The inventory list must be updated and filed with the public service commission within thirty days of the time of meter changes. The inventory ~~shall~~ list must include the location of the wells on which well name and legal description where the meters are being used located as well as the make, type, and model, and serial number of each meter. Serial numbers shall be included only for meters used to measure oil production.

History: Effective July 1, 1986; amended effective December 1, 1989.

General Authority: NDCC 28-32-02, 64-02-03

Law Implemented: NDCC 64-02-15.1

69-10-05-03. Meter availability for testing. All meters must be available during normal working hours for inspection or testing, or both, by a representative of the public service commission. For safety reasons, the commission representative shall arrange for ~~a production company~~ an operator representative to be present during the inspection or test.

History: Effective July 1, 1986; amended effective December 1, 1989.

General Authority: NDCC 28-32-02, 64-02-03

Law Implemented: NDCC 64-02-15.1

69-10-05-04. Location of meter. No meter may be installed in any location where it may be unnecessarily exposed to weather or other possible cause of damage which could significantly affect its accuracy. Each meter ~~shall~~ must be installed in a reasonably accessible location for purposes of testing and inspection.

History: Effective July 1, 1986; amended effective December 1, 1989.

General Authority: NDCC 28-32-02, 64-02-03

Law Implemented: NDCC 64-02-15.1

69-10-05-07. Producer Operator testing equipment required unless third party performs test - Equipment standards. Each producer or meter owner operator shall maintain equipment and facilities necessary for accurately testing all types and sizes of meters used by the producer or meter owner operator unless the producer or meter owner operator has arranged to have the testing done by a third party approved by the public service commission.

History: Effective July 1, 1986; amended effective December 1, 1989.

General Authority: NDCC 28-32-02, 64-02-03

Law Implemented: NDCC 64-02-15.1

69-10-05-09. Frequency of accuracy tests - Filing test results. All meters used to measure oil production shall must be tested for accuracy at least once every three months, and a meter system accuracy report sent to the public service commission within thirty days after testing. All primary elements used for gas measurement shall must be physically inspected at intervals not to exceed two years with the exception of orifice plates which shall must be inspected at least every six months. All secondary elements used for gas measurement shall must be tested and, if necessary, adjusted at least once every six months or in accordance with a plan approved by the public service commission. Tests shall be performed in accordance with manufacturer's recommendations. A legible copy of all meter tests and calibration reports must be filed with the public service commission within thirty days after completing the test or calibration.

History: Effective July 1, 1986; amended effective December 1, 1989.

General Authority: NDCC 28-32-02, 64-02-03

Law Implemented: NDCC 64-02-15.1

69-10-05-10. Accuracy test upon request. The public service commission will test any production meter subject to this chapter as soon as practicable upon written request from a person having a material and direct interest in the accuracy of a meter. If the meter meets public service commission accuracy standards, the cost of the test shall be paid by the person requesting the test. In all other cases, the cost of the test shall be paid by the producer or meter owner operator.

History: Effective July 1, 1986; amended effective December 1, 1989.

General Authority: NDCC 28-32-02, 64-02-03

Law Implemented: NDCC 64-02-15.1

69-10-05-11. Provisions of chapter 69-10-04 applicable. Persons engaged in the testing, installation, maintenance, and inspection of metering systems as provided in this chapter shall comply with the applicable provisions of chapter ~~69-10-04~~.

History: ~~Effective July 1, 1986.~~
General Authority: ~~NDCC 28-32-02~~
Law Implemented: ~~NDCC 64-02-15.1~~

Repealed effective December 1, 1989.

69-10-05-12.1. Newly installed gas meters. Every new or repaired gas meter must be properly calibrated prior to placing the meter in service.

History: Effective December 1, 1989.
General Authority: NDCC 28-32-02, 64-02-03
Law Implemented: NDCC 64-02-15.1

69-10-05-13. Oil meter tolerance. The meter factor of any meter used to determine the production of oil may not deviate more than plus or minus two percent from the original meter factor or it will be considered out of tolerance. If a meter does not prove or will not ~~calibrate~~ operate within tolerance, the meter must be adjusted, repaired, or replaced within ~~the time limitation prescribed by the public service commission meter specialist or the independent contractor~~ three business days.

History: Effective July 1, 1986; amended effective December 1, 1989.
General Authority: NDCC 28-32-02, 64-02-03
Law Implemented: NDCC 64-02-15.1

69-10-05-16. American petroleum institute and American gas association specifications. ~~The~~ Except as otherwise provided by rule or statute, the technical requirements for metering devices as published as of September 1, 1989, by the American petroleum institute and the American gas association shall be the specifications, tolerances, and other technical requirements guidelines for metering devices in North Dakota, except as modified or changed by public service commission rule or state law.

History: Effective July 1, 1986; amended effective December 1, 1989.
General Authority: NDCC 28-32-02, 64-02-03
Law Implemented: NDCC 64-02-15.1

69-10-05-17. Fee schedule for testing meters. The public service commission shall charge and collect a fee of fifteen dollars per inspector per quarter hour or fraction thereof for testing meters used to measure crude oil or gas production under North Dakota Century Code section 64-02-15.1. The fee for testing a meter shall not exceed three hundred fifty dollars for a crude oil meter and one hundred dollars for a gas meter.

History: Effective December 1, 1989.
General Authority: NDCC 28-32-02, 64-02-03
Law Implemented: NDCC 64-02-15.1

69-10-05-18. Variances. The public service commission may grant a variance on the basis of economic necessity if the variance does not sacrifice production accountability.

History: Effective December 1, 1989.
General Authority: NDCC 28-32-02, 64-02-03
Law Implemented: NDCC 64-02-15.1

TITLE 70
Real Estate Commission

DECEMBER 1989

70-02-03-16. Licensee acting in own behalf to set forth terms and conditions and make disclosure. A broker or salesman acting in his own behalf shall disclose his licensed status in writing to any person with whom he purchases, sells, exchanges, or options real property. All the terms and conditions of the transaction as agreed upon must be in writing, properly executed, and a copy furnished to such person. Copies of the disclosure of his licensed status and of the documents containing the terms and conditions of the transaction must be retained by the broker or salesman and made available to the commission upon request.

History: Effective September 6, 1989.
General Authority: NDCC 43-23-11.1(1)
Law Implemented: NDCC 43-23-11.1(1)

TITLE 75
Department of Human Services

OCTOBER 1989

AGENCY SYNOPSIS: Section 75-02-04-12 amends this section to provide for the allocation of incentive payments received from the federal government. Provides that twenty-five percent is retained by the department in recognition of participation in the costs of the statewide child support program, the administration of the state plan in conformity with the specific requirements of the department of health and human services, the effective operation of a central parent locate office, the efficiency of reporting and distributing collections from a single, centralized location, and the efficient and effective collection of past-due child support through federal and state income-tax refund offset programs. Seventy-five percent of the incentive payments are allocated to the counties based upon cost effectiveness including the ratio of collections to administrative costs, success in the establishment of paternities, success in the establishment of child support orders, and success in locating child support obligors.

75-02-04-12. Incentive payments.

1. The agency shall make an incentive payment to any political subdivision county of this state as well as any other state that makes collection of child support which has been assigned pursuant to North Dakota Century Code section 50-09-06 which participates in the costs of the program, taking into account the efficiency and effectiveness of the program activities carried out by that county.
2. The incentive payment shall be the percentage established by federal legislation, of any amount collected and retained by the state to reduce or repay assistance payments. Of the total amount of incentive payments made available to the state by the office of child support enforcement of the United States department of health and human services, in each biennial period, twenty-five percent must be retained by the agency in recognition of participation in the costs of the statewide

program; the administration of the state plan in conformity with the specific requirements of the department of health and human services; the effective operation of a central parent locate office; the efficiency of receipting and distributing collections from a single centralized location; and the efficient and effective collection of past-due support through federal and state income tax refund offset programs.

3. The incentive payment shall be made from the amounts which would otherwise represent the federal share of the assistance payments repaid to the state as a result of the collection Of the total amount of incentive payments made available to the state by the office of child support enforcement of the United States department of health and human services, in each biennial period, seventy-five percent must be paid by the agency to all the counties which participate in the costs of the program. The agency shall calculate the incentive to be paid to the counties comprising each regional unit, and shall distribute to each county the proportion of the incentives so calculated that is the same proportion as that county's share of regional unit expenditures borne by all counties in that region.
4. When more than one jurisdiction within this state is involved in the enforcement or collection of support, or this state is involved with one or more other states in the enforcement or collection of support, the amount of the incentive payment shall be allocated among such jurisdictions in a manner prescribed by the agency Of the total amount of incentive payments made available to counties, those payments which are made to the agency without regard to the state ratio of collections to total IV-D administrative costs, as provided in 42 U.S.C. section 658(b)(1)(A) and (B), will be distributed to the counties comprising each regional unit, based on cost effectiveness. The total collections within each regional unit will be divided by total expenditures within each regional unit. The resulting ratios will be added together. Each regional unit's individual ratio will be divided by the total of all ratios to determine the share of incentive payments of this type to be distributed within each region. This calculation will be made quarterly, and incentives of this type will be paid quarterly. For the purposes of making the calculation described in this subsection, total collections will include collections made in Indian reservation cases, but total expenditures will not include Indian reservation project expenditures.
5. Of the total amount of incentive payments made available to counties, those payments which are made to the agency based upon the state's ratio of collections to total IV-D administrative costs will be distributed to the counties comprising each regional unit based on paternity

establishment, support obligation establishment, and successful location of obligors.

- a. Sixty percent of the incentive payments of this type will be distributed to the counties comprising each regional unit based on paternity establishment. The number of paternities established in each region will be divided by the number of open cases in each region. The resulting paternity-to-caseload ratios for all regions will be added together. Each region's individual paternity-to-caseload ratio will be divided by the total paternity-to-caseload ratio to determine the percentage of incentive payment of this type to be distributed within each region.
- b. Thirty percent of the incentive payments of this type will be distributed to the counties comprising each regional unit based on support obligation establishment. The number of support obligations established in each region will be divided by the number of open cases in each region. The resulting support-establishment-to-caseload ratios for all regions will be added together. Each region's individual support-establishment-to-caseload ratio will be divided by the total support-establishment-to-caseload ratio to determine the percentage of incentive payment of this type to be distributed within each region.
- c. Ten percent of the incentive payments of this type will be distributed to the counties comprising each regional unit based on the successful location of obligors ("locates"). The number of locates made in each region will be divided by the number of open cases in each region. The resulting locate-to-caseload ratios for all regions will be added together. Each region's individual locate-to-caseload ratio will be divided by the total locate-to-caseload ratio to determine the percentage of incentive payment of this type to be distributed within each region.
- d. For the purposes of making the calculations described in this subsection, the number of paternities established, the number of support obligations established, the number of locates, and the caseload will include Indian reservation cases.
- e. The calculations described in this subsection will be made, and the calculated amounts distributed, annually after the end of the federal fiscal year.

History: Effective September 1, 1979; amended effective December 1, 1981; October 1, 1989.

General Authority: NDCC 50-09-02

Law Implemented: 45 CFR 302.52

DECEMBER 1989

STAFF COMMENT: Chapter 75-03-17 contains all new material but is not underscored so as to improve readability.

CHAPTER 75-03-17
RESIDENTIAL TREATMENT CENTERS FOR CHILDREN

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75-03-17-19	Interstate Compact on the Placement of Children
75-03-17-20	Rights and Obligations of the Applicant

75-03-17-01. Definitions.

1. "Applicant" means the entity requesting licensure as a residential treatment center for children ("center") under this chapter.
2. "Child" means a person who is a minor as that term is defined in North Dakota Century Code section 14-10-01, or who is a child within the meaning of subsection 1 of North Dakota Century Code section 27-20-02.
3. "Clinical supervision, diagnostic assessment, individual treatment plan, qualified mental health professional, residential treatment, and residential treatment center for children" mean the same as defined in North Dakota Century Code section 25-03.2-01.
4. "Department" means the department of human services.
5. "Mentally ill person" means the same as is defined in subsection 10 of North Dakota Century Code section 25-03.1-02.
6. "Program plan" means a center's plan for delivering its services and providing treatment.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-01, 25-03.2-03

75-03-17-02. Procedures for licensing.

1. Application. An application for, or for renewal of, a license as a residential treatment center for children must be submitted to the department which shall determine the suitability of the applicant for licensure under this chapter. The application must contain any materials that the department may require, including:
 - a. An architectural plan;
 - b. A comprehensive description of the program plan which includes:
 - (1) A plan demonstrating compliance with this chapter;
 - (2) The treatment modalities offered, such as milieu therapy, family therapy, chemotherapy, and psychotherapy;
 - (3) Prohibited treatment modalities; and
 - (4) The services provided directly by the facility and those provided by other community resources including special education as required by law;

- c. The funding base for building and operating the center including a projected twelve-month budget based on predictable funds; a new center must have funds or documentation of available credit sufficient to meet the operating costs for the first twelve months of operation; and
 - d. A copy of all policies required by this chapter.
2. **License renewal.** An application for license renewal must be submitted sixty days before the license expires and must describe any changes that have modified the physical plant, program plan, funding base, or professional competence since the granting or previous renewal of the license.
 3. **Initial license.** An initial license is in effect for up to one year. When a license is renewed, it may be issued for up to two years, at the discretion of the department. The license must identify the number and age groupings of children who may receive care, is valid only on the premises indicated, and is not transferable.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-02, 25-03.2-03, 25-03.2-05

75-03-17-03. Organization and administration.

1. **Governing body.** The applicant must have a governing body that is responsible for the operation, policies, program, and practice of the center. The governing body shall:
 - a. Define its philosophy, purpose, function, the geographical area served, the ages and types of children accepted for care, and the clinical disorders addressed by the program;
 - b. Ensure that all policies required by this chapter are in writing and on file at the center;
 - c. Develop a records retention policy consistent with state and federal law;
 - d. Assure that all vehicles transporting clients are: subject to routine inspection and maintenance, licensed by the state motor vehicle department, equipped with seatbelts for every passenger, equipped with a first-aid kit and a fire extinguisher, carry no more individuals than the manufacturer's recommended maximum capacity, handicapped accessible where appropriate, and driven by individuals who hold a valid state driver's license appropriate to the vehicle driven; and

- e. Obtain sufficient property insurance; liability insurance covering bodily injury, property damage, personal injury, professional liability; and automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault.
2. Legal status. The applicant must provide to the department:
 - a. A copy of the articles of incorporation, bylaws, partnership agreement, and any other evidence of legal registration of the entity;
 - b. A current list of partners or members of the governing body and any advisory board, including the address, phone number, principal occupation, and term of office of each listed person; and
 - c. A statement disclosing the owner of record of any building, facility, or major piece of equipment occupied or used by the applicant, the relationship of the owner to the applicant, and, if any, the cost of such use to the applicant and the identity of the entity responsible for the maintenance and upkeep of the property.
 3. Financial plan. The applicant must have a financing plan which includes a twelve-month budget, and which shows the center's financial ability to carry out its purposes and function. A new applicant must have sufficient funds available to carry it through its first year of operation.
 4. Audits. All financial accounts must be audited annually by a certified public accountant. The report must be made a part of the center's records and contain the accountant's opinion about the center's present and predicted financial solvency. The report must be submitted with an application for license renewal.
 5. Quality assurance. The applicant must have a quality assurance program that monitors and evaluates the quality and appropriateness of client care; provides a method for problem identification, corrective action, and outcome monitoring. The quality assurance program must include:
 - a. A plan for client and staff safety and protection;
 - b. A method to evaluate personnel performance and the utilization of personnel;
 - c. A system of credentialing, granting, and withholding staff privileges;

- d. A method to review and update policies and procedures assuring usefulness and appropriateness of policies and procedures;
 - e. A method to review appropriateness of admissions, care provided, and staff utilization;
 - f. A plan for the review of individual treatment plans;
 - g. A plan for program evaluations that includes measurements of progress toward the centers' stated goals and objectives; and
 - h. A method to evaluate and monitor standards of client care.
6. Client's case records. The applicant must maintain a confidential client record for each resident child which must be current and reviewed monthly. Each record must contain:
- a. An application for service;
 - b. A social history;
 - c. Medical treatment consent form signed by parents or legal guardian and any consent for the use of psychotropic medications as required under subdivision d of subsection 10 of section 75-03-17-07.
 - d. Name, address, and phone number of persons to be contacted in an emergency;
 - e. Reports on medical examinations, including immunizations, any medications received, allergies, dental examinations, and psychological and psychiatric examinations;
 - f. An explanation of custody and legal responsibility for the child and relevant court documents such as custody or guardianship papers; and
 - g. A written agreement between parents or guardian and the center to be prepared and signed by the center's representative and by the parents or guardian, and a record that the parents or guardian received a copy. The agreement must include:
 - (1) A statement as to who has financial responsibility;
 - (2) How payments are to be made to cover the cost of care;
 - (3) Which items are covered by the normal or regular center charges for care;

- (4) Medical arrangements including the cost of medical care;
- (5) Visiting arrangements and expectations;
- (6) Arrangements for clothing and allowances;
- (7) Arrangements for vacations;
- (8) Regulations about gifts permitted;
- (9) Arrangements for parental or the legal guardian's participation through regularly scheduled interviews with designated staff;
- (10) The center's policy on personal monetary allowance to be provided the child at the center; and
- (11) Records of special treatment orders.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-04. Admissions.

1. The center may admit only those children who are found eligible according to the center's admission policies. Every center shall have specific admission policies that describe which professional staff have the authority to admit a child; and describe the membership of the center's admission committee or committees. Admission committee membership must include one mental health professional.
2. a. Admission decisions must be based upon:
 - (1) A social history which includes presenting problems, family background, developmental history, educational history, and employment;
 - (2) A medical history which includes current status, any relevant findings of previous physical or psychiatric evaluations, and a list of the child's current medications and allergies; and
 - (3) Prior psychological and addiction evaluations.
- b. The history and prior evaluations must be obtained before a child is admitted; except when emergency care must be given, and then the information must be obtained within three working days after admission.

3. The center must determine whether a child may be admitted for care within thirty days of receipt of a completed application.
4. If a child is not admitted, the center must indicate the reason for nonadmission.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-06

75-03-17-05. Diagnosis and treatment while at the center.

1. Duties of the center. The center must:
 - a. Keep the child in contact, where appropriate and possible, with the child's family and relatives;
 - b. Involve the parents, where appropriate and possible, in the treatment plan;
 - c. When necessary, provide or arrange for family therapy;
 - d. Provide appropriate conferences involving the center, the parents, the referring agency, and the child, to review the case status and progress every six months. For a child placed in a center for a period of less than six months, the reviews must occur at monthly intervals; and
 - e. Provide a progress report to the referring agency, and the parent or legal guardian every three months.
2. Specialists. The services of specialists in the fields of medicine, psychiatry, psychology, and education must be used as needed.
3. Individual treatment plan.
 - a. The center shall develop and implement an individual treatment plan, and provide clinical supervision for the individual treatment plan. To the extent possible, the client, and the client's parents or legal guardian, must be involved in all phases of developing and implementing the individual treatment plan.
 - b. The plan must be:
 - (1) Based on a determination of a diagnosis using the first three axes of the multi-axial classification of the Diagnostic and Statistical Manual of Mental Disorders (1987 3d ed. revised) (DSM-III-R), which must be completed within five days of admission. In cases where a diagnosis by a mental health

professional based on a DSM-III-R classification has been completed within thirty days preceding admission, only updating is necessary;

- (2) Developed within five days of admission; and
- (3) Reviewed monthly, and amended as deemed necessary, by an interdisciplinary team including one qualified mental health professional.

c. The plan must identify:

- (1) Treatment goals to address the problems of the resident and family;
- (2) Timeframes for achieving the goals;
- (3) Indicators of goal achievement;
- (4) The persons responsible for coordinating and implementing the resident and family treatment goals;
- (5) Staff techniques for achieving the resident's treatment goals;
- (6) The projected length of stay and next placement; and
- (7) When referrals are made to other service providers, and the conditions under which referrals are made.

4. Work experience.

a. Where a center has a work program, it must:

- (1) Provide work experience that is appropriate to the age and abilities of the child;
- (2) Differentiate between the chores that children are expected to perform as their share in the process of living together, specific work assignments available to children as a means of earning money, and jobs performed in or out of the center to gain vocational training; and
- (3) Give children some choice in their chores and offer change from routine duties to provide a variety of experiences.

b. Work may not interfere with the child's time for school study periods, play, sleep, normal community contacts, or visits with the child's family.

5. Solicitation of funds. A center may not use a child for advertising, soliciting funds, or in any other way that may cause harm or embarrassment to a child or the child's family; and the written consent of the parent or guardian must be obtained prior to the center's using a child's picture, person, or name in any form of written, visual, or verbal communication; and prior to obtaining consent, a center must advise the parent or guardian of the purpose for which it intends to use the child's picture, person, or name, and of the times and places when and where such use would occur.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-06. Special treatment procedures.

1. Special treatment procedures. Special treatment procedures include the use of restraints, seclusion, and timeout. Special treatment orders must be issued in writing by the program director or previously authorized staff. If special treatment procedures are ordered, the following conditions must prevail:
 - a. The proximity of the staff must allow for visual and auditory contact with the child at all times;
 - b. All dangerous objects must be removed from the child's presence;
 - c. Rooms must have doors that open out, which have keyless locks with immediate release mechanisms;
 - d. All fixtures within the room must be tamperproof, with security mattresses of fire-resistant material. Switches must be located outside the room;
 - e. Smoke-monitoring or fire-monitoring devices must be an inherent part of the seclusion room, and the room must be properly ventilated;
 - f. Appropriate entries must be made in the child's file; and
 - g. A child under special treatment orders must be provided the same diet that other children in the center are receiving.
2. Timeout. Timeout procedures must be supervised by staff, and appropriate entries must be made in the child's file.
3. Restraints. A center must apply the following procedures in using restraint:

- a. A child may be restrained only when withholding this intervention would be contrary to the best interest of the child, and when less restrictive alternatives have failed;
- b. All restraints must be applied by staff trained in the use of restraints;
- c. Entries must be made in the child's file as to date, time, staff involved, reasons for the use, and extent of physical restraint;
- d. Only a qualified mental health professional staff member may order physical restraint. The order shall identify the type of restraint to be used and the circumstances and duration of use; and
- e. A child in physical restraint must be visually monitored every fifteen minutes by a trained staff member.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 50-11-03, 50-11-06.2

75-03-17-07. Medical care.

1. Medical examination. Prior to admission, each child must receive a medical examination.
2. Immunizations. A child must have current immunizations as required by North Dakota Century Code section 23-07-17.1.
3. Medical care arrangements. A center must make arrangements with a physician and a psychiatrist for medical and psychiatric care of clients.
4. Annual medical examination. Every child must have a medical examination annually.
5. Staff instruction. The center must inform staff members as to what medical care, including first aid, may be given by staff without specific orders from a physician. Staff must be instructed as to how to obtain further medical care and how to handle emergency cases.
 - a. At least one staff member on duty must have satisfactorily completed current first aid and cardiopulmonary resuscitation training and have on file at the center a certificate of satisfactory completion.
 - b. Each staff member must be able to recognize the common symptoms of illnesses of children and to note any marked physical defects of children. A sterile clinical

thermometer and a complete first-aid kit must be available.

6. Hospital admission. Arrangements must be made with a hospital for the admission of children from the center in the event of serious illness or an emergency.
7. Medical records. A child's medical records must include:
 - a. Current medical, psychological, or psychiatric records;
 - b. A record of the child's immunizations;
 - c. Consent of parents or guardian for medical care;
 - d. Records of the annual medical examination; and
 - e. A record of the medical care given at the center, including:
 - (1) Hospitalization records;
 - (2) Prescriptions used with quantity directions, physician's name, date of issue, and the name of the pharmacy indicated; and
 - (3) Significant illnesses or accidents.
8. Hospitalization or death reports. Any accident or illness requiring hospitalization must be reported to the parents or guardian immediately. Deaths must immediately be reported to the department, parents or guardian, a law enforcement agency, and the county coroner.
9. Prescription labels. Prescribed drugs and medicines must be obtained on an individual prescription basis with the following labeling:
 - a. Name of pharmacy;
 - b. Patient's name;
 - c. Prescription number;
 - d. Prescribing practitioner;
 - e. Directions for use;
 - f. Date of original issue or renewal;
 - g. Name of drug;
 - h. Potency of drug;

- i. Quantity of drug; and
 - j. Expiration date, when applicable.
10. Administration of medications.
- a. Medications must be administered by a designated staff person in accordance with medical instructions. All medications must be stored in a locked cabinet, with the keys for the cabinet kept under the supervision of the designated staff person assigned to administer the medications. The medication cabinet must be equipped with separate cubicles, plainly labeled with the client's name.
 - b. Medications belonging to the client must be returned to the client's parents or guardian upon discharge, or must be destroyed in the presence of a witness by the designated person in charge of medication storage by flushing the medications into the sewer system and removing and destroying the labels from the container.
 - c. The center may possess a limited quantity of nonprescription medications and administer them under the supervision of designated staff.
 - d. The center must have policies governing the use of psychotropic medications. Parents or the guardian of a client who receives psychotropic medication must be informed of benefits, risks, side effects, and potential effects of medications. A parent or legal guardian's written consent for use of the medication must be obtained and filed in the client's record.
 - e. A child's psychotropic medication regime must be reviewed by the attending psychiatrist every seven days for the first thirty days and every thirty days thereafter.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-08. Dental care. Each child must have an annual dental examination. If a child has not had an examination in the twelve months prior to admission, an examination must occur within ninety days of admission.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-09. General health.

1. **Sleep.** Each child shall have enough sleep for the child's age at regular and reasonable hours, and under conditions conducive to rest. While children are asleep, at least one staff member must be within hearing distance.
2. **Personal hygiene.** Children must be encouraged and helped to keep themselves clean.
3. **Bathing facilities.** Bathing and toilet facilities must be properly maintained and kept clean.
4. **Personal articles.** Each child must have a toothbrush, comb, an adequate supply of towels and washcloths, and personal toilet articles.
5. **Daily diet.** Menus must provide for a varied diet that meets a child's daily nutritional requirements.
6. **Clothing.** Each child must have clothing for the child's exclusive use. The clothing must be comfortable and appropriate for current weather conditions.
7. **Play.** The center must provide safe, age-appropriate equipment for indoor and outdoor play.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-10. Education and training.

1. **Public education.** Any primary or secondary program offered by a facility must be in compliance with standards established by the department of public instruction. The center shall ensure that resident children comply with all state school attendance laws.
2. **Religious education.** Children must be provided an opportunity to receive instruction in their religion. No child may be required to attend religious services or to receive religious instruction if the child chooses not to attend services or receive religious instruction.
3. **Discipline.** Discipline must be diagnostic and remedial, rather than punitive. Corporal punishment, verbal abuse, and derogatory remarks about the child, the child's family, religion, or cultural background are prohibited; a child may not be slapped, punched, spanked, shaken, pinched, or struck with an object by any staff of the center; and only staff members of the center may discipline children.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-11. Children as employees prohibited. Children may not be solely responsible for any major phase of the center's operation or maintenance, such as cooking, laundering, housekeeping, farming, or repairing.

History: Effective December 1, 1989.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-12. Discharge.

1. The decision that a child no longer needs or cannot benefit from the center's treatment must be made by a discharge committee comprised of three staff or consultants involved in the child's care and treatment.
2. The center must assist the child and the child's parents or legal guardian in preparing for termination of placement in the center, whether the move is to return the child home or to a foster family, adoptive family, an institution, or the home of relatives.
3. Prior to discharge, the facility must complete a discharge plan. The plan must include:
 - a. Progress report;
 - b. Reason for discharge;
 - c. Future services recommended for the child and child's family;
 - d. An assessment of the child's needs which remain to be met;
 - e. A statement that the discharge plan recommendations have been reviewed with the child and parent or guardian;
 - f. Potential for readmission; and
 - g. The name and title of the person to whom the resident was discharged.

History: Effective December 1, 1989.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-13. Responsibility for notification of runaway children. When a center confirms that a resident's whereabouts are unknown, the center shall immediately notify law enforcement officials and the parents or guardian. The child's return must be reported immediately to law enforcement and the child's parents or guardian.

History: Effective December 1, 1989.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-14. Employee qualifications. Staff must be mentally and physically capable of performing assigned duties and demonstrate basic professional competencies as required by the job description. Every staff member shall have an annual physical examination, and obtain a statement that no medical condition exists that may interfere with his or her ability to perform assigned duties.

History: Effective December 1, 1989.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-04, 25-03.2-07

75-03-17-15. Staff to children ratio.

1. The ratio of staff to children during waking hours is dependent on the needs of the children and the requirements of the individualized treatment plans, but may not be less than two staff members. At night other staff must be available to be summoned in an emergency.
2. The ratio of professional staff to children is dependent on the needs of the children.

History: Effective December 1, 1989.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-16. Personnel policies. Policies related to employment at a center must include:

1. A description of the specific duties each employee is expected to perform, when they are to be performed, and other persons involved in their performance;
2. The qualifications required for each position, and how the qualifications are verified when an individual is hired;
3. A criminal background check for each person hired;

4. A requirement that all employees receive both oral and written instructions as to their individual responsibility for preserving confidentiality;
5. The type and duration of the center's inservice training program related to each position in the center;
6. Procedures for notifying all employees as to whom to consult and how to do so, in the event of an emergency;
7. Opportunities for attendance at workshops, institutes, or continuing education; and
8. Procedures for reporting suspected child abuse and neglect in compliance with state law and regulations.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-17. Center staff.

1. The center's staff must include:
 - a. An executive director who has a bachelor's degree in a behavioral science, or a bachelor's degree in any field and two years of experience in administration;
 - b. A program director who has a master's degree in social work, psychology, or in a related behavioral science with two years of professional experience in the treatment of children and adolescents suffering from mental illnesses or emotional disturbances;
 - c. Child care staff who are at least twenty-one years of age and have training and experience sufficient to equip them for their duties;
 - d. The clinical services of a psychologist, psychiatrist, and physician which may be obtained on a consultation basis; and
 - e. Educators, where onsite education is provided.
2. Volunteer services may be used to augment and assist other staff in carrying out program or treatment plans. Volunteers must receive orientation training regarding the program, staff, and children of the center, and the functions they can perform.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-18. Safety, buildings, and grounds.

1. Compliance with fire, sanitation, and zoning standards. An applicant must demonstrate compliance with applicable state or local fire, sanitation, and zoning standards.
 - a. Fire. For fire safety, the center must meet the applicable life safety standards established by the city. If the city has not established life safety standards, the center must comply with chapter 21 of the Life Safety Code of the national fire protection association, 1985 edition, and amendments thereto.
 - (1) Compliance is shown by submitting the written report of an authorized fire inspector, following an initial or subsequent inspection of a building which states the:
 - (a) Rated occupancy and approval of the building for occupancy; or
 - (b) Existing hazards, and recommendations for correction which, if followed, would result in approval of the building for occupancy.
 - (2) All electrical and heating equipment must be approved by underwriters laboratories, incorporated or another nationally recognized testing laboratory.
 - b. Sanitation. Compliance with sanitation standards is shown by submitting a statement prepared by a licensed environmental health professional or authorized public health officer, following an initial or subsequent annual inspection, that the building's plumbing, sewer disposal, water supply, milk supply, and food storage and handling comply with the applicable rules of the state department of health and consolidated laboratories.
 - c. Zoning. Compliance with zoning requirements is shown by submitting a statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances.
2. Safety. Safety requirements of a center must include:
 - a. Prohibition of smoking on the premises;
 - b. Procedures for water safety where swimming facilities are on the grounds;

- c. A copy of the Red Cross manual on first-aid measures, or a book of its equivalent, and first-aid supplies;
 - d. Prohibiting a child's possession and use of any firearms while at the center;
 - e. Advising children of emergency and evacuation procedures upon their admission and thereafter every two months;
 - f. Training in properly reporting a fire, in extinguishing a fire, and in evacuation from the building in case of fire. Fire drills must be held monthly. Fire extinguishers must be provided and maintained throughout each building in accordance with standards of the state fire marshal; and
 - g. Telephones with emergency numbers posted by each telephone in all buildings that house children.
3. Buildings and grounds. The center must have sufficient outdoor recreational space, and the center's buildings must meet the following standards:
- a. Bedrooms. Each child must have: eighty square feet [7.43 square meters] in a single sleeping room, and sixty square feet [5.57 square meters] per individual in a multiple occupancy sleeping room; his or her own bed, and bed covering in good condition; and a private area to store his or her personal belongings. A center may not permit: more than two children in each sleeping room; children to sleep in basements or attics; nonambulatory children to sleep above the first floor; and a child six years of age or older to share a bedroom with a child of the opposite sex.
 - b. Bathrooms. The center's bathroom facilities must have an adequate supply of hot and cold water; be maintained in a sanitary condition; have separate toilet and bath facilities for male and female residents, and employees; and have one bathroom that contains a toilet, washbasin, and tub or shower with hot and cold water for every four children.
 - c. Dining and living rooms must have suitably equipped furnishings designed for use by children within the age range of children served by the center.
 - d. The center must provide sufficient space for indoor quiet play and active group play.
 - e. Adequate heating, lighting, and ventilation must be provided.

f. Staff quarters must be separate from those of children although near enough to assure proper supervision of children.

g. A center must provide a quiet area for studying.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-07

75-03-17-19. Interstate compact on the placement of children.

1. The center must comply with the interstate compact on the placement of children and the interstate compact for juveniles.
2. All placements from any state which has not adopted the interstate compact on the placement of children or the interstate compact on juveniles must comply with all North Dakota laws and rules prior to the arrival of a child at a center.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-03, 25-03.2-06

75-03-17-20. Rights and obligations of the applicant.

1. Right to apply for license. An applicant has the right to apply to receive a license to operate a center under this chapter.
2. Entry and inspection. The applicant must allow authorized representatives of the department to enter any of the applicant's buildings or facilities in order to determine the extent to which the applicant is in compliance with the rules of the department, to verify information submitted with an application for licensure or license renewal, and to investigate complaints. Inspections must be scheduled for the mutual convenience of the department and the center unless the effectiveness of the inspection would be substantially diminished by prearrangement.
3. Access to records. The applicant must allow duly authorized representatives of the department to inspect the records of the applicant, to facilitate verification of the information submitted with an application for licensure, and to determine the extent to which the applicant is in compliance with the rules of the department.

4. Denial of access to facilities and records. Any applicant or licensee which denies access, by the authorized representative of the department, to a facility or records for the purpose of determining the applicant's or licensee's state of compliance with the rules of the department shall have its license revoked or application denied.
5. License refusal or revocation. Failure to comply with any of the standards of this chapter or other state law or regulation is cause for refusal or revocation of a license.
6. Appeal. An applicant may appeal a license denial in accordance with North Dakota Century Code chapter 28-32.

History: Effective December 1, 1989.

General Authority: NDCC 25-03.2-10

Law Implemented: NDCC 25-03.2-02, 25-03.2-03, 25-03.2-07, 25-03.2-08, 25-03.2-09

TITLE 89
Water Commission

NOVEMBER 1989

89-01-01-01. Organization and functions of the water commission.

1. History of commission. The North Dakota state water commission was established in 1937, as an emergency measure during the prolonged drought. The legislation, codified as North Dakota Century Code chapter 61-02, contains a preamble which provides an insight into the legislative intent for creating the commission, both a state agency and a public corporation. North Dakota Century Code section 61-02-01 states:

It is hereby declared that the general welfare and the protection of the lives, health, property, and the rights of all people of this state require that the conservation and control of water in this state, public or private, navigable or unnavigable, surface or subsurface, the control of floods, and regulation and prevention of water pollution, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern the public purpose. It is hereby further declared that any and all exercise of sovereign powers of this state in investigating, constructing, maintaining, regulating, supervising, and controlling any system of works involving such subject matter embraces and concerns a single object, and that the state water conservation commission in the exercise of its powers, and in the performance of all its official duties, shall be considered and construed to be performing a governmental function for the benefit, welfare, and prosperity of all the people of this state.

The law originally provided that the state engineer was the chief technical adviser of the commission but that such responsibilities would be in addition to the engineer's

regular duties as state engineer. In 1941 the law was amended to provide that the state engineer would be the secretary and chief engineer of the commission.

2. **Commissioners.** Two commissioners, the governor and the commissioner of agriculture are statewide elected officials elected for four-year terms. Seven commissioners are appointed by the governor for terms of two to six years. The governor is the chairman of the commission; a vice chairman is designated by the commission. The present members of the commission are:

Governor George A. Sinner, Chairman, Bismarck

~~Kent Jones~~ Sarah Vogel, Commissioner of Agriculture, Bismarck

~~William Guy, Bismarck~~ Norman Rudel, Fessenden

Joyce Byerly, Watford City

Daniel Narlock, Oslo, MN

Jacob "Jake" Gust, West Fargo

Jerome Spaeth, Bismarck

~~Richard Backes, Glenburn~~ Lorry Kramer, Minot

William Lardy, Dickinson

3. **Secretary to the commission.** The state engineer is the statutory secretary and chief engineer to the commission. The secretary assists the commission by coordinating the operations of the commission and relieving the individual commissioners of administrative detail.

4. **Commission divisions.** The commission consists of the following ~~five~~ four divisions:

- a. Division of hydrology.
- b. Division of planning.
- c. Administrative division.
- d. Division of general engineering.
- ~~e. Legal services division.~~

~~Four~~ Three divisions are headed by directors. The administrative division is managed by the assistant secretary of the commission.

5. Functions of commission divisions.

- a. Division of hydrology. The hydrology division is responsible for the collection, storage, interpretation, and dissemination of hydrologic and water quality data. Using these data, specific water management programs are developed for individual water sources that will optimize their utilization.
- b. Division of planning. The planning division is responsible for the long-range comprehensive water and related land resources planning functions of the commission. The geographical scope of such studies range from individual watersheds in North Dakota to interstate river basins. The level of detail ranges from reconnaissance to specific projects.
- c. Administrative division. The duties of the administrative division are to provide accounting, budget, and fiscal control, personnel functions, support services for other agency divisions, and other administrative functions. The division also provides coordination in water resource programs with federal agencies, state agencies, and local entities.
- d. Division of general engineering. The primary functions of the engineering division involve water resource management and water resource project development, with emphasis on surface water. This includes drainage and diking, control of meandered lakes, floodplain management, hydrologic investigation, special studies, and the construction of water management projects such as: dams, dikes, ditches, irrigation projects, water supply systems, and pump structures.
- ~~e. Legal services division. The director of the legal services division is an assistant attorney general. The director is responsible for providing legal advice and assistance to the commission and the directors of the other divisions within the commission. In addition, the director is responsible for water-related litigation affecting the commission and the state.~~

6. Inquiries. General inquiries regarding the water commission may be addressed to the state engineer. Specific inquiries regarding the functions of each division may be addressed to the director or manager of the division. All requests for hearings, declaratory rulings, and for water permits may be addressed to the state engineer, unless specific public notice directs otherwise.

7. Personnel roster. All correspondence to the below listed persons should be addressed as follows, unless otherwise indicated:

(Person's name and title)
Water Commission
State Office Building
900 East Boulevard
Bismarck, North Dakota 58505
(701) 224-2750

Governor George A. Sinner, Chairman of the
Commission, State Capitol, Bismarck

Commissioner of Agriculture ~~Kent Jones~~ Sarah Vogel,
Commissioner, State Capitol, Bismarck

~~William Guy~~ Norman Rudel, Commissioner, ~~Bismarck~~ Fessenden

Joyce Byerly, Commissioner, Watford City

Daniel ~~Norlock~~ Narlock, Commissioner, Oslo, MN

Jacob "Jake" Gust, Commissioner, West Fargo

Jerome Spaeth, Commissioner, Bismarck

~~Richard Backes~~ Lorry Kramer, Commissioner, ~~Glenburn~~ Minot

William Lardy, Commissioner, Dickinson

Vernon Fahy, State Engineer and Secretary
to the Commission

Milton Lindvig, Director, Hydrology Division

Eugene Krenz, Director, Planning Division

Matt Emerson, Management Director and
Assistant Secretary to the Commission

Dave Sprynczynatyk, Director, Division of
General Engineering

~~Rosellen Sand~~, ~~Director, Legal Services~~
~~Division~~

8. Organizational chart. A descriptive organizational chart of the state water commission is attached to this section as an appendix.

History: Amended effective August 1, 1983; November 1, 1985; October 1, 1987; November 1, 1989.

General Authority: NDCC 28-32-02.1
Law Implemented: NDCC 28-32-02.1

89-02-02-02. Definitions. In this chapter unless the context otherwise requires, the following definitions apply:

1. "Assessment drain" is any drain fitting the definition set forth in subsection 2 of North Dakota Century Code section 61-16.1-02.
2. "Board" means the managers of the water resource district in which the majority of the watershed of a project is located.
3. "District" means water resource district.
4. "Drain" is any structure or construction which changes the water surface area of a wetland.
5. "Land not normally subject to standing water" means land which is inundated, on the average, not more than once in five years.
6. "Lateral drain" means a drain constructed after the establishment and construction of the original drain or drainage system which the permit previously obtained did not contemplate and which allows water to flow into such original drain or drainage system.
7. "Party of record" means any person who submits oral or written testimony or evidence for the record at the state engineer's hearing.
8. "Permanent wetland" means a well-defined basin which characteristically holds water throughout the year. Permanent wetlands go dry only after successive years of below normal runoff and precipitation. Freshwater permanent wetlands typically have a border of aquatic vegetation and a predominant open water area in the interior. Saline permanent wetlands are typically devoid of emergent vegetation and exhibit a white, salt encrusted shoreline. This definition is the uniform classification adopted by the state engineer and the game and fish commissioner for permanent wetlands.
9. "Project" means the proposed activity contained in a drainage application under consideration by the board for a permit, or, when considered by the state engineer, the activity approved by the board.
10. "Seasonal (shallow) wetland" means a depression which holds water in normal years from spring runoff until mid-July. In years of normal runoff and precipitation, seasonal wetlands may not be tilled but can be used for hayland or pasture. In

low runoff, dry years, these areas may be tilled for crop production, but commonly reflood with frequent or heavy summer or fall rains. This definition is the uniform classification adopted by the state engineer and the game and fish commissioner for seasonal wetlands.

11. "Semipermanent (intermittent) wetland" means a well-defined depression or basin which holds water in normal years throughout the summer. Semipermanent wetlands generally go dry only in years of below normal runoff and precipitation. Freshwater semipermanent wetlands, commonly referred to as cattail sloughs, are characterized by a predominance of cattail and bulrush vegetation with scattered open water areas. Saline semipermanent wetlands are characterized by a predominance of alkali bulrush and scattered open water areas. This classification is the uniform classification adopted by the state engineer and the game and fish commissioner for semipermanent wetlands.
12. "Supplemental hearing" means a hearing held to review evidence not contained in the record of the state engineer's hearing.
13. "Surface coal mining operation" means a person or entity engaged in surface coal mining operations as defined in North Dakota Century Code section 38-14.1-02.
- ~~13.~~ 14. "Temporary wetland" means a shallow depression area which holds water or is waterlogged from spring runoff until early June. In years of normal runoff and precipitation, temporary wetland areas may be tilled for crop production. In years of high runoff or heavy spring rain, these areas may not dry out until mid-July and would not be tilled but may be used for hayland or pasture. Temporary wetlands frequently reflood during heavy summer and fall rains. Sheetwater, as defined in North Dakota Century Code section 61-32-02, is not a temporary wetland. This definition is the uniform classification adopted by the state engineer and the game and fish commissioner for temporary wetlands.
- ~~14.~~ 15. "Watercourse" is as defined by North Dakota Century Code section 61-01-06.
- ~~15.~~ 16. "Watershed" is the area draining into a wetland or series of wetlands. A series of wetlands is a group of two or more wetlands which are hydrologically linked naturally or by man's efforts.

History: Effective October 1, 1988; amended effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13, 61-32-04
Law Implemented: NDCC 61-32-03

89-02-02-07. Applications. Applications for a permit to drain must be filed with the state engineer on the state engineer's application form. The application must provide the following:

1. Description of the drain.
2. United States department of agriculture soil conservation service photos of the project area with the wetlands which are not to be drained specifically identified thereon.
3. An estimate of the number of wetland acres to be drained.
4. In the case of surface coal mining operators, the approximate date of wetland disturbance.

The application may be mailed or delivered to:

Office of the State Engineer
900 East Boulevard
Bismarck, ND 58505

Insufficient or incomplete applications will be returned to the applicant by the state engineer.

History: Effective October 1, 1988; amended effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-08. Review by state engineer and transmittal to appropriate board. Upon receipt of a properly completed application, the state engineer shall review the wetlands to be drained in the project area and determine whether all wetlands to be drained are temporary wetlands. If all wetlands are determined to be temporary wetlands, that fact must be noted on the permit application. If a project is proposing to drain only temporary wetlands, the state engineer shall also determine whether the project is of statewide or interdistrict significance using the factors set out in section 89-02-02-12. The state engineer shall note the determination in that regard upon the application. If the project will drain other than temporary wetlands, the state engineer may not determine whether the project is of statewide or interdistrict significance until after the board has considered and approved the project.

In any event, the permit application must ~~then~~ be forwarded within sixty days of receipt to the board in the county in which a majority of the watershed of the proposed project is located.

History: Effective October 1, 1988; amended effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-09. Board procedure for processing applications to drain other than temporary wetlands. A board shall follow this procedure in processing a drainage permit application when the project will drain permanent, semipermanent, or seasonal wetlands, or if it has been determined to be of statewide or interdistrict significance, or if the board determines a board ~~hearing~~ meeting should be held:

1. Upon receipt of an application to drain from the state engineer, the board shall set the date, time, and place for a meeting at which it will receive information concerning the merits of, as well as any testimony or information pertinent to the application. At the applicant's expense, the board shall also give notice by mail not less than twenty days from the date set for consideration of the drainage application to:
 - a. The applicant.
 - ~~a.~~ b. All record title owners of real estate or holders of a contract for deed whose property would be crossed by the proposed drain.
 - ~~b.~~ c. All downstream riparian landowners on the watercourse into which water will be drained within two miles [3.22 kilometers] from the outlet of the drain as determined by the board.
 - ~~c.~~ d. Any water resource board which would be substantially affected by the water to be drained.
 - ~~d.~~ e. The state game and fish department.
 - ~~e.~~ f. The state department of health and consolidated laboratories.
 - ~~f.~~ g. The state highway commissioner for any proposed drainage that will affect or cross the right of way of any public highway or road.
 - ~~g.~~ h. The state engineer.
 - ~~h.~~ i. Any person who has made a written request for notification of that project and has advanced the cost of providing that notification. Such advance may not exceed ten dollars.
2. Notice must also be published in a newspaper of general circulation in the area of the proposed drainage once a week for two consecutive weeks. Final notice must be published not more than fifteen days nor less than five days from the date set for the ~~hearing~~ meeting.
3. The notice must give the essential facts of the proposed drain including, but not limited to: name and address of applicant;

legal description of the area to be drained; purpose of the drainage; watercourse into which the water will be drained; legal description of the confluence of the drain and watercourse into which the water will be drained; the time, date, and place of the board's consideration of the application; and the location and date of availability of information regarding the project.

4. Fourteen days prior to the date set by the board for its meeting to receive information on the application, the applicant shall submit to the board all documentary information the applicant intends to present at the board's meeting. The board shall immediately place such information in the board's office if the office is open for public access at least twenty hours each week, or if the board offices are not open to the public twenty hours each week, in custody of the auditor of the county in which the majority of the watershed of the drain is to be built. The information must be available for public review. The board shall notify the applicant of this requirement upon its receipt of an application to drain. If the information is placed in the auditor's office, the auditor shall return the information to the board one working day prior to the board's meeting.
5. The board shall allow submission of all relevant evidence, oral or written. If the board does not make its decision to approve or disapprove the application at the meeting, it shall provide written notice of its decision to all persons requesting such notice and to all persons identified in subsection 1.
6. The meeting at which the board receives information concerning the application must be recorded either stenographically or by electronic recording. If the board approves the permit application, this record and all documentary information received by the board must be transferred to the state engineer. Upon request of the state engineer, the board shall provide a transcript of the meeting. The cost of providing a transcript must be borne by the applicant.
7. At the conclusion of the meeting at which the board receives information about the proposed drain, the board shall announce that:
 - a. The board's denial of a permit constitutes final denial of the permit. Appeals of a denial must be taken to the district court within thirty days.
 - b. A board approved application will be forwarded to the state engineer who will determine whether the project is of statewide or interdistrict significance and whether the wetlands to be drained will be replaced.

- c. Those who wish to be notified of the board's decision approving an application or of a decision by the state engineer of statewide or interdistrict significance shall so notify the board and shall provide their name and address at the end of the meeting. Notice will then be provided as set forth in section 89-02-02-13.
8. Applications considered by the board will be evaluated by the factors considered for drains of statewide or interdistrict significance. Those factors are set forth in section 89-02-02-14.
9. If the board denies the application, it shall return the application to the applicant along with a copy of the board's determination and rationale. A copy of the board's denial and rationale must also be sent to the state engineer.
10. If the board approves the application, the board's approval must be noted on the application and a copy of the determination sent to the applicant. The application, a copy of the determination, and all information reviewed by the board in considering the application must be forwarded to the state engineer for review within twenty days of the determination. The board's decision approving the application must contain a determination of the location and size, in surface acres, of wetlands to be drained by the proposed drain. A seven and one-half minute topographic map indicating the location and size of the wetlands approved for drainage must be attached to the determination.
11. The board's notice to an applicant must state that the board's approval of the application is not a permit to drain until the state engineer has:
 - a. In the case of a drain determined to be of statewide or interdistrict significance, also approved the application and found the wetland acres drained would be replaced by an equal number of replacement acres; or
 - b. In the case of a drain determined not to be of statewide or interdistrict significance, found the wetland acres drained would be replaced by an equal number of replacement acres.
12. Drainage permit applications submitted by a surface coal mining operator shall not be subject to this section unless the board determines a meeting is necessary to protect public and private interests which are not addressed in a surface coal mining permit.

History: Effective October 1, 1988; amended effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-10. Board procedure for processing permits when a hearing meeting is not required. Upon referral from the state engineer of a permit which is not of statewide or interdistrict significance and will not drain permanent, semipermanent, or seasonal wetlands, or in the case of drainage permit applications submitted by a surface coal mining operator, the board shall follow this procedure:

1. The board shall review the permit application and any supporting documentation and determine whether protection of public and private interests would be better served by a specific public meeting to consider the project. If it is determined a specific public meeting is necessary to protect public and private interests, or in the case of drainage permit applications submitted by a surface coal mining operator, it is determined a meeting is necessary to protect public and private interests which are not addressed in a surface coal mining permit, the board shall process the permit application in accordance with the provisions of section 89-02-09.
2. If the board determines a specific public meeting is unnecessary, the board shall consider the project pursuant to the criteria set forth in section 89-02-02-14 and shall deny or grant the application with or without modifications or conditions based upon those criteria. If the application is granted, it shall be forwarded to the state engineer for his determination of the necessary replacement wetlands acres. In either case, written notice of the board's decision must be provided to all participants in the board's decision and to the state engineer. The notice must state that the board's approval does not constitute a final approval until the state engineer finds the wetland acres to be drained will be replaced by an equal number of replacement acres.

History: Effective October 1, 1988; amended effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13, 61-32-04
Law Implemented: NDCC 61-32-03

89-02-02-24. Time within which to begin construction of drain. The Except in the case of a permit issued to a surface coal mining operator, the recipient of a permit to drain under this chapter shall commence actual construction within two years of the date the state engineer's decision granting the permit is final. The two-year period does not begin until any appeal of the state engineer's decision or board's decision is completed, nor does it run during the course of any other legal action brought to challenge the state engineer's decision or board's decision or halt or modify the project.

In the case of a permit issued to a surface coal mining operator, the time to begin construction shall fall within the term of the mining permit or any successive renewals issued pursuant to North Dakota Century Code chapter 38-14.1.

Once construction has been commenced the permit recipient shall make good faith efforts and satisfactory progress, as determined jointly by the state engineer and the water resource board, toward completion of the project.

If the two-year period runs before construction is commenced, the permit recipient may make a written request for a one-year extension which must be ~~granted~~ approved by both the state engineer and the water resource board. All requests for extensions must be made at least sixty days prior to the end of the two-year period and must specifically state why construction has not commenced. Upon expiration of any extension, the permit recipient may request a further extension.

In the event the two-year period passes without the commencement of construction, an extension of the period as provided in this section, or legal process staying construction, the permit is void.

History: Effective October 1, 1988; amended effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-03-13, 61-32-03

89-02-03-01. Scope of chapter. This chapter contains rules by which the state game and fish department and the state engineer jointly determine the number of ~~wetlands~~ wetland acres to be drained and find those wetland acres will be replaced by an equal acreage of replacement wetlands or will be debited to the wetlands bank. This chapter includes rules governing the wetlands bank.

History: Effective October 1, 1988; amended effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-05

89-02-03-02. Definitions. In this chapter, unless the context otherwise requires, the following definitions apply:

1. "Applicant" means a person requesting a drainage permit.
2. "Application" means an application for a permit to drain made pursuant to North Dakota Century Code section 61-32-03.
3. "~~Appropriate replacement acres~~" means ~~fifty percent of the wetland acres required within the same county or contiguous counties as the wetland being drained. However, if less than fifty percent are available in that county or a contiguous county, wetlands in the same biotic area are considered appropriate replacement wetlands.~~
4. "Biotic area" means one of the four biotic areas which are designated: (a) Agassiz Lake Plain, which includes Pembina, Walsh, Grand Forks, Traill, Cass, and Richland Counties; (b) Southern Drift Plain, Northeastern Drift Plain, Northwestern

Drift Plain, ~~Turtle Mountain~~ Mountains, which include Renville, Bottineau, ~~Rolette~~, Towner, Cavalier, Burke, McHenry, Pierce, Benson, Ramsey, Wells, Eddy, Foster, Nelson, Griggs, Steele, Barnes, LaMoure, Ransom, Dickey, and Sargent Counties; (c) Missouri Coteau, Coteau Slope, which include Divide, Williams, Mountrail, Ward, McLean, Sheridan, Burleigh, Kidder, Stutsman, Emmons, Logan, and McIntosh Counties; and (d) Missouri Slope, Little Missouri Slope, which include McKenzie, Dunn, Golden Valley, Billings, Stark, Mercer, Oliver, Morton, Grant, Sioux, Slope, Hettinger, Bowman, and Adams Counties.

- ~~5.~~ 4. "Board" means the managers of the water resource district in which the wetland to be drained is located.
- ~~6.~~ 5. "Drain" is any structure or construction which changes the water surface area of a wetland.
- ~~7.~~ 6. "Evaluation team" consists of one staff member from each of the state engineer's and commissioner's staff. Their duties include determining the number of wetland acres to be drained, whether replacement acres are available in the wetlands bank, and whether manmade wetlands not in the wetlands bank have material wildlife values.
- ~~8.~~ 7. "Manmade wetland" is a wetland with material wildlife values which results from man's activities whether inadvertent or not.
- ~~9.~~ 8. "Normal water level" is the approximate spring water level in years with typical amounts and rates of spring runoff during periods of annual average precipitation. The normal water level is arrived at by evaluating a wetland under the criteria set forth in section 89-02-03-04 and does not include sheetwater.
9. "Replacement acres" means replacement wetlands credited to the wetlands bank or a debit, provided that the total debits to the wetlands bank does not exceed two thousand five hundred acres [1011.70 hectares].
10. "Replacement wetland" includes both restored natural wetlands and manmade wetlands with material wildlife values.
11. "Surface coal mining operator" is a person or entity engaged in surface coal mining operations as defined in North Dakota Century Code section 38-14.1-02.

History: Effective October 1, 1988; amended effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-32-04
Law Implemented: NDCC 61-32-01, 61-32-03, 61-32-04, 61-32-05

89-02-03-04. Evaluation of wetland acres. In evaluating the acreage of wetlands to be debited or credited, the evaluation team shall first determine the normal water level for each wetland. This determination will be made by using one or more of the following data sources:

1. Aerial photos from various years, and when available, precipitation data of the area for a period of at least twelve months prior to the date of any photos used.
2. United States geological survey seven and one-half minute topographic maps.
3. Where determined necessary by the evaluation team after consultation with both the state engineer and the commissioner, an actual onsite investigation.
4. United States fish and wildlife service's national wetland inventory.
5. United States department of agriculture soil conservation service wetland determinations made to implement swampbuster.
6. Any historical cropping records which are documented and applicable to the situation.
7. Underlying soil type.
8. Watershed size, wetland basin size, and watershed yield information.
9. Any information considered important by the evaluation team.

When any photos, documents or governmental determinations of the presence or absence of a wetland is provided by the applicant with the board approved permit, the evaluation team will consider that information in making its determination.

The evaluation team shall coordinate its decision with the state engineer's decision on a permit application of statewide or interdistrict significance.

The ~~sum of the~~ area of land within the normal water level for each wetland ~~to be drained~~ will be the acreage of wetlands ~~to be drained~~ debited or credited to the wetlands bank.

History: Effective October 1, 1988; amended effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-05

89-02-03-05. Notification of acres to be replaced and sources for replacement. Once a determination of the number of wetland acres to be

drained has been made, and in the case of an application of statewide or interdistrict significance after the state engineer's approval of a drainage permit pursuant to chapter 89-02-02, the evaluation team shall report its findings to the state engineer and the commissioner. The state engineer shall then notify the applicant and the board by certified mail of:

1. The number of wetland replacement acres required to replace offset the acres to be drained.
2. Whether sufficient appropriate replacement acres are available in the wetlands bank including: the number of acres in that county or contiguous counties, or if less than fifty percent of the required acreage is available in the account for that county or contiguous counties, the availability of replacement wetlands within the same biotic area, and the availability of replacement wetlands in other areas of the state, and the debit balance, if any.
3. The average cost of replacement acres in the wetlands bank at the time of the notice.
4. That the applicant's desire to use wetlands replacement acres from the wetlands bank must be expressed in writing by personally delivering it to the state engineer's office, or by mailing it by certified or regular mail to the state engineer, within thirty days of the date the notice of availability is received by the applicant or his agent. If the applicant chooses to mail the notice by regular mail, the date of receipt by the state engineer tolls the thirty-day time period.

The notice to the landowner applicant must include a notice of intent form for the landowner's applicant's use.

History: Effective October 1, 1988; amended effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-05

89-02-03-06. Notice of intent - Payment. Within thirty days of the receipt of notice of the acreage to be replaced and the availability of replacement acres, the applicant shall provide written notice of intent to use wetlands replacement acres from the wetlands bank to the state engineer by personal delivery or by certified or regular mail on the notice of intent form. The state engineer will notify the commissioner upon receipt of the notice.

The form must include:

1. Name and address of the applicant.
2. The drain permit application number.

3. Whether applicant will use replacement ~~acreage~~ acres from the wetlands bank.
4. Other information deemed pertinent by the state engineer.

For purposes of this section, the average cost of replacement ~~acres~~ wetlands is determined on the day the notice of intent is received in the office of the state engineer if the notice is delivered personally, the date the notice of intent is mailed if sent by certified mail, or the date of receipt by the state engineer if mailed by regular mail. The state engineer shall notify the applicant by certified mail of the amount due to defray ten percent of the average cost of replacement. Within ten days of the state engineer's sending of this notice, the ~~landowner~~ applicant shall give a cashier's or certified check for at least that amount to the state engineer. The check must be payable to the wetlands replacement fund.

Upon receipt, as determined above, of a notice of intent from an applicant whose permit has received the necessary approval from the board and the state engineer, the acreage to be replaced shall become a debit to the wetlands bank.

History: Effective October 1, 1988; amended effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-32-04
Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-05

89-02-03-07. Priority. Except in cases where a governmental agency or a coal mining operation has created or restored a wetland for the purposes of an identified project, priority in time gives the superior right to use credits in the wetlands bank. However, in no event may a governmental agency ~~or a coal mining operation~~ hold a priority for the same credit for more than two years unless an application to drain and use that credit has been made. Any replacement wetland credits created by a surface coal mining operator shall remain credited to that operator until the final bond release for all coal mining operations conducted in North Dakota by that operator under North Dakota Century Code chapter 38-14.1. At the time of final bond release, credits not used by the operator must be transferred to the account for permanent wetlands. A priority dates from the conditional approval by the board of an application to drain. Provided, if any notice of intent or certified or cashier's check is not received within the time period allowed under ~~section~~ sections 89-02-03-05 and 89-02-03-06, the priority date is the date of receipt by the state engineer of the certified or cashier's check. Regardless, the notice of intent must be in writing on the form prescribed by the state engineer and must be personally delivered to the office of the state engineer or mailed by certified or regular mail.

History: Effective October 1, 1988; amended effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-32-04
Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-05

89-02-03-07.1 Temporarily restored wetlands. Wetland acres may be restored or created on a temporary basis or for a specified period of time if the following criteria are met:

1. The period of time the wetland will be in existence is specified and does not exceed eleven years;
2. The restoration is not mitigation for a project nor replacement acres for drainage; and
3. The drainage of the wetland was not contrary to state law existing at the time of drainage.

Wetlands restored or created pursuant to this section shall be credited to the temporary account. When the time period specified in subsection 1 expires, the state engineer will notify the landowner in writing that the landowner has sixty days to inform the state engineer whether the landowner plans to drain the wetland credited to the temporary account. If the landowner does not inform the state engineer within sixty days or informs the engineer the wetland will not be drained, the wetland will be credited to the permanent account. A wetland credited to the temporary account may, at the option of the landowner, be transferred to the permanent account at any time.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-32-04, 61-32-05

89-02-03-07.2. Drainage of restored or created wetlands credited to the permanent wetlands bank. No restored or created wetland which has been credited to the permanent account may be drained without the permission of the state engineer. The state engineer's permission must be deemed to have been given if a drainage permit has been obtained. The state engineer will inform landowners when a wetland on their property has been credited to the permanent wetlands bank.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-05

89-02-03-08. Credits to wetlands bank - Qualification. To qualify as a credit to the wetlands bank, a manmade wetland must have material wildlife values. Any natural wetland which is restored in whole or in part shall qualify as a credit to an account of the wetlands bank unless the drainage of the wetland was not authorized by state law and no debit was made pursuant to section 89-02-03-15.

History: Effective October 1, 1988; amended effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-32-04
Law Implemented: NDCC 61-32-04, 61-32-05

89-02-03-09. Wetlands bank - What is credited. All previously drained natural wetlands, which are or were restored, or manmade wetlands with material wildlife values, which are or were created, by any person after December 31, 1986, must be credited to an account of the wetlands bank unless their restoration or creation is required as mitigation of a federal aid project. Each acre credited must be identified on a map by the state engineer.

The acreage credited to the wetlands bank must be determined using the method for evaluating acreages to be drained. Unauthorized drainage constructed after July 1, 1975, and closed pursuant to final action under North Dakota Century Code section 61-32-07 may not be a credit to the wetlands bank.

For purposes of this section, a federal aid project is one where mitigation is required by federal statute or rule.

History: Effective October 1, 1988; amended effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-04, 61-32-05

89-02-03-10. Cost of wetland in wetlands bank. The cost of replacement wetlands is the cost of land acquisition, ~~easement, lease,~~ and construction of replacement wetlands is the actual cost of acquisition whether by lease, easement, or other means, plus either the construction cost to restore a natural wetland or the cost to construct a manmade wetland with material wildlife values. The average cost of a wetland acre is calculated by summing the cost of each of the total wetland acres ever placed in the bank and dividing the sum by the total number of acres ever placed in the bank. If wetlands are donated to the wetland bank, the state engineer and commissioner shall determine the probable cost of acquisition and restoration or construction and that amount must be factored into the average cost of wetlands in the bank.

The state engineer and commissioner will jointly determine the average cost of land acquisition for replacement wetlands for each biotic area. This determination will be based on land acquisition costs for wetland acres in the wetlands bank from each biotic area.

The state engineer and commissioner will jointly determine a statewide average construction cost for replacement wetlands. This determination will be based upon actual construction costs, including reasonable engineering and consulting fees, for wetland replacements where the exclusive purpose of the replacement wetland was to restore wildlife values or where other purposes created no additional construction cost.

The state engineer and commissioner will, as deemed necessary, but not less than once every year, review and adjust the average cost of land acquisition in each biotic area and the statewide average construction costs to reflect land acquisition costs and construction costs within each biotic area.

The state engineer and commissioner will keep an average cost of replacement wetlands for each of the four biotic areas. The ten percent or greater portion of the wetland replacement cost to be paid by any person draining a wetland will be based upon the current average cost of replacement wetlands in the biotic area in which the drainage is proposed.

History: Effective October 1, 1988; amended effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-32-04
Law Implemented: NDCC 61-32-04, 61-32-05

89-02-03-12. Records of wetlands bank. The state engineer shall maintain an accounting of credits and debits in the wetlands bank. Credits and debits will be separately identified by account and by county and biotic area. The wetlands bank will be comprised of the following accounts:

1. Government agency account. All wetlands restored for use by a governmental agency for use on an identified project as set forth in section 89-02-03-07 must be accounted for in this account until they are transferred to another account.
2. Permanent account. All wetlands permanently credited must be accounted for in this account.
3. Surface coal mining accounts. A separate account must be maintained for each surface coal mining operator. Debits must be charged at the time of drainage permit approval. Credits must be added at the time of final bond release for any tract, as provided by subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17. At the time of final bond release for all coal mining operations conducted in North Dakota by that operator under North Dakota Century Code chapter 38-14.1, any remaining wetland credits must be transferred to the permanent account.
4. Temporary account. All wetlands temporarily credited must be accounted for in this account until they are transferred to another account.

History: Effective October 1, 1988; amended effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-32-04
Law Implemented: NDCC 61-32-05

89-02-03-14. Debits. Debits to the wetlands bank must be accounted for in the order of priority set forth in section 89-02-03-07. At least fifty percent of the wetlands to be drained shall ~~become a debit or~~ be replaced from the wetlands bank in this order:

1. Wetlands located in the same county.

2. Wetlands located in a contiguous county.
3. Wetlands located in the same biotic area.

If fifty percent of the wetland acres cannot be replaced with wetlands in the same county, contiguous county or biotic area, drainage is still allowed as long as the debit balance is less than two thousand five hundred acres [1011.70 hectares].

If the drainage project is conducted by a government agency or pursuant to a coal mining operation, wetlands may be replaced from credits created by that agency or operation for that project if the project was identified when the wetlands were credited to the bank, if the state engineer was informed at the time of crediting of the intended use of the wetlands, and if the order for replacing the wetlands acres set forth in this section is complied with.

History: Effective October 1, 1988; amended effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-05

89-03-01-01.3. When a water permit for stored water may be obtained. A water permit for stored water may be obtained when the stored water will be put to a beneficial use. A water permit may also authorize the storage of additional water for flood control, a holdover supply, or other reasons deemed necessary by the state engineer. However, authorization to store additional water for flood control, a holdover supply, or other reasons does not create a water right.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-01.1, 61-04-01.2, 61-04-02

89-03-01-01.4. Amount of water that may be held in storage pursuant to a water permit. Unless otherwise authorized by the state engineer, any person authorized to store water for a nonconsumptive beneficial use, a consumptive beneficial use, or other reasons, except flood control, may only fill the reservoir to the amount authorized in the permit once each year. The reservoir will be filled during the first runoff following February first of each year. A consumptive use authorized in the water permit must be taken from the stored water. Unless otherwise authorized by the state engineer and with the exception of water stored for flood control, any inflows to the reservoir after the reservoir has been filled for the year must be allowed to pass through the reservoir and downstream.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-01.2, 61-04-02

89-03-01-01.5. Sale of excess water by an incorporated municipality. Any incorporated municipality that appropriates water in excess of its current needs pursuant to North Dakota Century Code section 61-04-06.2 may sell the excess water provided:

1. The municipality is supplying all the demands of its inhabitants;
2. The agreement for sale of water is terminable by the incorporated municipality upon six months' notice to the purchasing entity; and
3. The agreement for sale is approved by the state engineer.

This section does not apply to agreements for the sale of water entered into prior to November 1, 1989.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-06.2, 61-02-27

89-03-01-04. Notice of application.

1. When ~~an~~ a proper application is filed, the state engineer will forward the appropriate number of completed notice of application forms to the applicant. The notice will include, but is not limited to, the following essential facts: the places and use of appropriation, the amount of and purpose for which the water is to be used, the applicant's name and address, and the newspaper in which the time and place of hearing will be published.
2. Upon receipt of the completed notice forms, the applicant shall send a notice of application by certified mail to the following:
 - a. Each To the governing body of each city located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion.
 - b. To the governing body of the township or other governing authority of each rural subdivision located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion. A rural subdivision is a subdivision which has lots of ten acres [4.05 hectares] or less and is geographically located outside of a city.
 - c. To the governing body of the township or other governing authority for each rural tract of land which is owned by more than ten individuals and is located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion.

d. Each Except for record title owners whose land falls within subdivision a, b, or c, each record title owner of real estate within a one-mile [1.6-kilometer] radius of the proposed point of diversion (excluding all landowners within the geographical boundary of a city). The determination of title owners must be based on title records on file with the register of deeds of the appropriate county. For land subject to a contract for deed, the contract's grantor and grantee must both be notified.

3. After notice of application has been mailed to those required by this section, the applicant shall properly complete an affidavit of mailing notice and return it to the state engineer by certified mail. The affidavit of notice must state how the applicant determined the record title owners and must list the names and addresses of those who were sent notices by certified mail. This affidavit must be mailed to the state engineer within sixty days from the date the state engineer sent the notices of application to the applicant. If ~~it~~ a properly completed affidavit of notice is not submitted within sixty days, the priority date of the conditional water permit application will be amended to the date on which the state engineer receives the affidavit of mailing notice. If ~~it~~ a properly completed affidavit of notice is not submitted within one hundred twenty days, the application must be considered to have been withdrawn by the applicant.

~~4. For purposes of clarification, illustrated examples involving the one-mile [1.6 kilometer] radius from the location of the proposed water appropriation site are attached in appendix A.~~

History: Amended effective April 1, 1989; November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-05

89-03-01-05. Publication of notice of hearing.

1. Upon receipt of an applicant's properly completed affidavit of mailing notice by certified mail, the state engineer shall set a date for a hearing on the application.
2. The state engineer will provide a notice of hearing to a newspaper of general circulation in the area of the proposed point of diversion and instruct the newspaper to publish the notice once a week for two consecutive weeks.
3. A copy of the notice of hearing shall be forwarded to the applicant so that the notice may be reviewed for accuracy.
4. The applicant must pay costs of publication.

History: Amended effective April 1, 1989; November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-05

89-03-03-02. Definition of domestic rural use. For the purpose of North Dakota Century Code section 61-04-01.1, "domestic rural use" means two or more family units or households obtaining water from the same system for personal needs and for household purposes, including, but not limited to, heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding one acre [.40 hectare] in area for each family unit or household for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-01.1

89-03-03-03. Definition of aquaculture. "Aquaculture" means the cultivation of the natural produce of water. Aquaculture must be considered an industrial use.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-01.1

89-03-03-04. Definition of reasonably necessary for the future water requirements of the municipality. "Reasonably necessary for the future water requirements of the municipality" means one hundred percent of the amount of water to be beneficially used thirty years from the priority date of the conditional water permit.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-06.2, 61-04-23, 61-04-24, 61-04-25

89-03-03-05. Definition of stored water. "Stored water" means water temporarily or permanently retained by or in a dam, dike, excavation, or other constructed works.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-01.2, 61-04-02, 61-04-17

STAFF COMMENT: Articles 89-08, 89-09, and 89-10 contain all new material but are not underscored so as to improve readability.

ARTICLE 89-08

DAMS, DIKES, AND OTHER DEVICES

Chapter	
89-08-01	Definitions
89-08-02	Construction Permits
89-08-03	Inspections
89-08-04	Operating Plan

CHAPTER 89-08-01 DEFINITIONS

Section	
89-08-01-01	Definitions
89-08-01-02	Definition of Unsafe Dam, Dike, or Other Device

89-08-01-01. Definitions. The following definitions apply in this article:

1. "Appurtenant works" means all works incident or attached to a dam, dike, or other device, including but not limited to:
 - a. A spillway, either in the dam or separate from it;
 - b. The reservoir and its rim;
 - c. A low-level outlet; and
 - d. A water conduit such as a tunnel, pipeline, or penstock, either through the dam, dike, or other device or their abutments.
2. "Construction" or "construct" means any activity for which a permit is required by North Dakota Century Code section 61-16.1-38, including construction, alteration, enlargement, or modification of a dam, dike, or other device.
3. "Dam" means any artificial barrier or obstruction, including any appurtenant works, across a stream channel, watercourse, or an area that drains naturally or may impound water.
4. "Dike" means an embankment, including appurtenant works, constructed to protect real or personal property.
5. "District" means a water resource district.

6. "Engineer" means a person who has been duly registered and licensed as an engineer by the North Dakota state board of registration for professional engineers and land surveyors.
7. "Height" means the vertical distance in feet from the stream channel bottom at the centerline of the dam to the top of the settled embankment.
8. "High-hazard dam" means any dam located upstream of developed or urban areas where failure may cause serious damage to homes, industrial and commercial buildings, and major public utilities. There is potential for the loss of more than a few lives if the dam fails.
9. "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam, dike, or other device.
10. "Low-hazard dam" means a dam located in rural or agricultural areas where there is little possibility of future development. Failure of low-hazard dams may result in damage to agricultural land, township and county roads, and farm buildings other than residences. No loss of life is expected if the dam fails.
11. "Medium-hazard dam" means a dam located in predominately rural or agricultural area where failure may damage isolated homes, main highways, or railroads, or cause interruption of minor public utilities. The potential for the loss of a few lives may be expected if the dam fails.
12. "Other device" means a water control structure, other than a dam or dike, which may include, but is not limited to, diversion ditches, dugouts, lagoons, and holding ponds.
13. "Owner" means any person who owns, controls, operates, maintains, manages, or proposes to construct a dam, dike, or other device, except that for the purpose of signing the application for construction permit, "owner" means the person who owns the property or interest in property upon which the dam, dike, or other device will be built.

14. "State engineer" means the state officer provided for in North Dakota Century Code section 61-03-01 or any of the state engineer's employees or authorized agents.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-16.1-38

89-08-01-02. Definition of unsafe dam, dike, or other device. A dam, dike, or other device is unsafe if it threatens harm to life or property, or is improperly maintained.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-03-21.2

CHAPTER 89-08-02 CONSTRUCTION PERMITS

Section	
89-08-02-01	Construction of Dams, Dikes, or Other Devices Exceeding a Capacity of Twelve and One-half Acre-feet
89-08-02-02	Contents of Application and Approval of the Application

89-08-02-01. Construction of dams, dikes, or other devices exceeding a capacity of twelve and one-half acre-feet. Any person intending to construct a dam, dike, or other device capable of impounding, obstructing, or diverting more than twelve and one-half acre-feet for any purpose must obtain a construction permit from the state engineer. The impounding capacity of a dam is calculated based upon the top of the settled embankment of the dam. The diverting capacity of a dike or diversion ditch is calculated based upon the runoff from a twenty-five year, twenty-four hour, precipitation event. No construction on the dam, dike, or other device can begin until a construction permit is obtained. The state engineer may not authorize construction of any known unsafe or improper dam, dike, or other device. The state engineer may order any changes, conditions, or modifications necessary for safety or protection of property.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-30-13
Law Implemented: NDCC 61-16.1-38

89-08-02-02. Contents of application and approval of the application.

1. A completed application for a construction permit must be submitted to the state engineer and contain:
 - a. A completed application form;
 - b. Plans and specifications for the proposed construction which, in the case of a high-hazard dam, medium-hazard dam, or low-hazard dam over twenty-four feet [7.31 meters] in height, must be prepared by an engineer;
 - c. Evidence recognized in a court of law sufficient to establish a prima facie case of a property right in the property that will be affected by the construction of the dam, dike, or other device; and
 - d. Any additional data or information required by the state engineer.

2. Within forty-five days after receipt of a completed application by the state engineer, the state engineer shall complete an initial review of the application. In the case of a dam, if the state engineer determines the proposed dam is a high-hazard dam, medium-hazard dam, or low-hazard dam over twenty-four feet [7.31 meters] in height, and the plans and specifications were not prepared by an engineer, the applicant shall submit plans and specifications prepared by an engineer. The state engineer shall forward the completed application along with any changes, conditions, or modifications to the water resource board of the district where the proposed project is to be located.

3. The board, within forty-five days of receiving the application from the state engineer, shall consider the application and suggest any changes, conditions, or modifications to the state engineer.

History: Effective November 1, 1989.
 General Authority: NDCC 28-32-02, 61-03-13
 Law Implemented: NDCC 61-16.1-38

CHAPTER 89-08-03 INSPECTIONS

Section	
89-08-03-01	Inspections and Reports During Construction of High-Hazard Dams, Medium-Hazard Dams, and Low-Hazard Dams Over Twenty-four Feet [7.31 meters] in Height
89-08-03-02	Monitoring During Construction by the State Engineer
89-08-03-03	Changes in Construction
89-08-03-04	Requested Inspections

89-08-03-05 Periodic Inspections After Construction
89-08-03-06 As Built Plans

89-08-03-01. Inspections and reports during construction of high-hazard dams, medium-hazard dams, and low-hazard dams over twenty-four feet [7.31 meters] in height. In order to protect property and assure safety, the following are conditions to all permits for high-hazard dams, medium-hazard dams, or low-hazard dams over twenty-four feet [7.31 meters] in height:

1. An engineer must be in charge of and responsible for inspections during construction.
2. Inspections during construction must be performed at intervals necessary to ensure conformity with the construction permit and the plans and specifications.
3. Within seven days after each inspection, the engineer in charge shall submit a written report to the state engineer specifying the information obtained pursuant to the inspection. The report will specify any changes necessary under this section.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-16.1-38

89-08-03-02. Monitoring during construction by the state engineer. The state engineer may monitor any dam, dike, or other device during construction to ensure conformity with the construction permit and the plans and specifications.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-11

89-08-03-03. Changes in construction. If, pursuant to an inspection under section 89-08-03-01 or 89-08-03-02, the state engineer or engineer in charge determines changes in construction are necessary to ensure safety, whether the changes are necessary because the dam, dike, or other device does not comply with the construction permit or plans and specifications, or an unforeseen condition is discovered, or for any other reason, the state engineer may order the appropriate changes and may order construction be stopped until the changes are made.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-04-11

89-08-03-04. Requested inspections.

1. Upon receipt of an affidavit complaining a dam, dike, or other device is unsafe because of its construction, maintenance, or operation, the state engineer shall examine the available information and determine if the complaint is justified.
2. If the state engineer determines the complaint is unjustified, the state engineer shall notify the complainant in writing of that fact. If the complainant continues to request an inspection even though the state engineer determines the complaint is unjustified, the state engineer shall make the inspection upon receiving from the complainant a certified check or cashier's check in an amount sufficient to cover the total cost of inspection.
3. If the state engineer determines the complaint is justified, the state engineer shall make the inspection upon receiving from the complainant a certified check or cashier's check in an amount sufficient to cover the total cost of inspection.
4. If the dam, dike, or other device is defective, the state engineer shall require the owner of the dam, dike, or other device to pay the cost of inspection, and upon payment shall return the amount deposited by the complainant. If the cost of inspection is not paid within thirty days by the owner of the defective dam, dike, or other device, the cost of inspection shall become a lien against any of the owner's property.
5. If the dam, dike, or other device is not found defective, any money deposited by the complainant for the inspection may not be returned.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-11, 61-03-21.1, 61-03-21.2

89-08-03-05. Periodic inspections after construction. As a condition on all construction permits, the state engineer may require inspection of a dam, dike, or other device as often as necessary after construction to protect property and assure safety.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-11, 61-16.1-38

89-08-03-06. As built plans. As a condition on all construction permits, the owner of the dam, dike, or other device will provide the state engineer with "as built" plans after the dam, dike, or other device has been constructed.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-16.1-38

CHAPTER 89-08-04 OPERATING PLAN

Section
89-08-04-01 Operating Plan

89-08-04-01. Operating plan. By the fifteenth of February of each year, the operator of a reservoir with a capacity of more than one thousand acre-feet shall submit an operation plan for that year to the state engineer. The state engineer shall review the operating plan and if deficiencies or discrepancies exist, the state engineer shall notify the owner of the dam of the deficiencies or discrepancies within thirty days of discovering the deficiencies or discrepancies. The owner of the dam shall correct the deficiencies or discrepancies and return the corrected operating plan to the state engineer within fourteen days of receiving notice of the deficiencies or discrepancies. The operation plan must be approved by the state engineer prior to the operation of the dam. If the operator receives no response from the state engineer, the operation plan is approved. The operation plan must contain at a minimum:

1. A reservoir operation procedure;
2. A maintenance procedure for the dam and appurtenant works; and
3. Emergency procedures and warning plans.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-03-21

ARTICLE 89-09 WETLAND RESTORATION PERMITS

Chapter
89-09-01 Wetland Restoration Permits

CHAPTER 89-09-01
WETLAND RESTORATION PERMITS

Section	
89-09-01-01	Permit - When Required
89-09-01-02	Definitions
89-09-01-03	Contents of Application
89-09-01-04	Initial Review by State Engineer
89-09-01-05	Application Analysis
89-09-01-06	Decision
89-09-01-07	Effect of Permit

89-09-01-01. Permit - When required. Whenever a wetland is to be restored and the state engineer has determined the restoration does not increase the natural capacity of the wetland more than twelve and one-half acre-feet, the person responsible for the wetland restoration shall apply for a wetland restoration permit on a form provided by the state engineer. When the wetland restoration increases the natural capacity of the wetland more than twelve and one-half acre-feet, the provisions of article 89-03 apply. In all cases where the wetland restoration will retain, divert, or obstruct more than twelve and one-half acre-feet of water, the provisions of article 89-08 apply.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02, 61-15-02, 61-15-03, 61-16.1-38, 61-16.1-39

89-09-01-02. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Applicant" means the person who applies for a wetland restoration permit.
2. "Natural capacity" means the capacity of the wetland before drainage or disturbance.
3. "State engineer" means the state officer provided for in North Dakota Century Code section 61-03-01 and any of the state engineer's staff.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-01, 61-15-02, 61-15-03

89-09-01-03. Contents of application. The application for a restoration permit must contain the following information:

1. Location of the proposed construction;
2. Delineation of each wetland to be restored;
3. Dimensions of each proposed structure;
4. Natural overflow elevation for each wetland;
5. Existing overflow elevation of each wetland;
6. Proposed overflow elevation of each wetland;
7. Total volume of water to be stored;
8. Proposed construction methods and materials;
9. Prima facie evidence of a legal right to restore each wetland and flood the land inundated by the structures; and
10. The proposed plan of operation.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02, 61-15-02, 61-15-03

89-09-01-04. Initial review by state engineer.

1. Upon receipt the state engineer shall review the application and determine if further information is necessary.
2. If the state engineer determines more information is necessary, the state engineer shall inform the applicant who shall supply the information within the timeframe allowed by the state engineer.
3. When the state engineer determines no further information is required, the state engineer shall proceed with the analysis of the application.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02, 61-15-02, 61-15-03

89-09-01-05. Application analysis. In analyzing a permit, the state engineer shall consider:

1. Impact of the restoration on existing water users;
2. If the restoration is a part of a larger project; and
3. The public interest, including:

- a. Benefits of the restoration;
- b. Economic impact of the restoration;
- c. Impact on fish, game, and recreation;
- d. Impact on future uses of the water and related resources;
- e. Impact on other persons;
- f. Applicant's ability to properly complete the restoration;
- g. Impact on flooding and water quality; and
- h. Likelihood the restoration will have material wildlife values.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02, 61-15-02, 61-15-03

89-09-01-06. Decision. After consideration of all the factors in section 89-09-01-05, the state engineer shall render a decision. If the state engineer finds the restoration will have a positive impact when all the factors are considered, the state engineer will grant the permit. The state engineer may deny or condition a permit if the state engineer finds any of the factors considered demonstrate a negative impact. The state engineer may also place conditions necessary for safety or the protection of others' rights upon any restoration permit granted.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02, 61-15-02, 61-15-03

89-09-01-07. Effect of permit. The granting of a permit under this chapter does not of itself constitute a right to appropriate water.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-02, 61-15-02, 61-15-03

ARTICLE 89-10

ISLANDS AND BEDS OF NAVIGABLE STREAMS AND WATERS

Chapter
89-10-01

Islands and Beds of Navigable Streams and Waters

CHAPTER 89-10-01
ISLANDS AND BEDS OF NAVIGABLE STREAMS AND WATERS

Section	
89-10-01-01	Authority
89-10-01-02	Prohibition on Permanent Relinquishment
89-10-01-03	Definitions
89-10-01-04	Authorization
89-10-01-05	Application for Permit, Easement, Lease, or Management Agreement
89-10-01-06	Application Review
89-10-01-07	Public Meeting
89-10-01-08	General Permit Standards
89-10-01-09	Specific Project Requirements
89-10-01-10	Projects Not Requiring a Permit
89-10-01-11	Structures Below Permit Line
89-10-01-12	Public Recreational Use
89-10-01-13	Vehicular Access
89-10-01-14	Cancellation by the State Engineer
89-10-01-15	Termination by Applicant
89-10-01-16	Assignments
89-10-01-17	Inspections
89-10-01-18	Reclamation
89-10-01-19	Maintenance, Repair, and Reconstruction
89-10-01-20	Areas of Special Interest

89-10-01-01. Authority. These rules are adopted and promulgated by the state engineer pursuant to North Dakota Century Code chapter 61-33 to provide consistency in the administration and management of the islands and beds of navigable streams and waters. These rules do not apply to the interests of the state of North Dakota in oil, gas, and related hydrocarbons.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-02. Prohibition on permanent relinquishment. Sovereign lands may not be permanently relinquished but must be held in perpetual trust for the benefit of the citizens of the state of North Dakota.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-03. Definitions. The following definitions apply to this article:

1. "Authorization" means a permit, easement, lease, or management agreement approved and granted by the state engineer after application; and the authority granted in section 89-10-01-10.
2. "Grantee" means the person, including that person's assigns, successors, and agents who are authorized pursuant to an authorization.
3. "Navigable streams or waters" means any waters which were in fact navigable at time of statehood, including the Missouri River in its entirety, the Yellowstone River in its entirety, the Red River of the north from Wahpeton to the Canadian border, the Bois De Sioux River from Wahpeton to the South Dakota border, the James River, the Upper Des Lacs Lake, and Devils Lake.
4. "Permit line" means that line below which the action of the water is frequent enough either to prevent the growth of vegetation or to restrict its growth to predominantly wetland species. Islands in navigable streams and waters are considered to be below the permit line in their entirety.
5. "Project" means any activity which occurs below the permit line of navigable streams or waters.
6. "Riparian owner" means a person who owns land adjacent to navigable streams or waters or the person's authorized agent.
7. "State engineer" means the state officer provided for in North Dakota Century Code section 61-03-01 or any of the state engineer's employees or authorized agents.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-04. Authorization. Each project which lies either partially or wholly below the permit line of navigable streams or waters requires an authorization from the state engineer prior to construction or operation, except as specified in section 89-10-01-10.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-05. Application for permit, easement, lease, or management agreement. Applications for an authorization must be on forms prescribed by the state engineer and contain the information required by the state engineer. Applications must be submitted to the North Dakota State Engineer, State Office Building, 900 East Boulevard, Bismarck, North Dakota 58505.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-06. Application review. Upon receipt of a completed application, the state engineer shall initiate a review as follows:

1. Comments must be requested from the following entities:
 - a. The state game and fish department;
 - b. The state department of health and consolidated laboratories;
 - c. The state historical society;
 - d. The state land department;
 - e. The Little Missouri River Commission if the application involves the Little Missouri River;
 - f. The state parks and recreation department;
 - g. The United States fish and wildlife service;
 - h. The park district and planning commission of any city or county, if any part of the project is within the boundaries of the city or county;
 - i. Any water resource district in which the proposed project will be wholly or partially located; and
 - j. Other agencies, private entities, and landowner associations as appropriate or required by law.
2. Each entity shall submit all comments in writing to the state engineer within thirty days of the date requests for comments were mailed. The state engineer is not bound by any comment submitted.
3. Upon completion of the review and any public meeting held pursuant to section 89-10-01-07, the state engineer may grant, deny, or condition the application.

4. The state engineer shall provide written notice of the decision on the application by certified mail.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-07. Public meeting. An information-gathering public meeting may be held by the state engineer prior to final action on a project. The procedure for notice and meeting must be as follows:

1. The state engineer shall cause a notice of meeting to be published in the official newspaper for each county in which the project is located. The notice must be published once each week for two consecutive weeks.
2. The meeting date must be at least ten days after the date of last publication.
3. The meeting must be conducted by the state engineer and the meeting may be held in Bismarck.
4. The meeting is not an adversary proceeding nor a hearing under North Dakota Century Code chapter 28-32.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-08. General permit standards. The state engineer may approve, modify, or deny any permit application. In deciding what action to take on a permit application, the state engineer shall consider the potential effects of the proposed project on the following:

1. Riparian owner's rights;
2. Recreation;
3. Navigation;
4. Aesthetics;
5. Environment;
6. Erosion;
7. Maintenance of existing water flows;
8. Fish and wildlife;
9. Water quality; and

10. Alternative uses.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-09. Specific project requirements.

1. In addition to the considerations set forth in section 89-10-01-08, the following conditions apply when a permit application involves the mining of gravel, sand, or other resources other than oil, gas, and related hydrocarbons:
 - a. Mining must be completed in the shortest practicable period of time and during the season which will minimize the effects on the waterway and biotic life in the waterway.
 - b. Mining may be prohibited or restricted when it would, in the judgment of the state engineer, adversely affect the maintenance or reproduction of fish or other wildlife populations.
 - c. If the state engineer determines mining will have a significant adverse impact on downstream riparian owners, the grantee must obtain the riparian owner's written consent.
2. In addition to the considerations set forth in section 89-10-01-08, the following considerations apply when a permit application involves dredging or filling:
 - a. Unless there is no reasonable alternative or the public need exceeds other values, dredging or filling will not be permitted.
 - b. Dredged material must be removed to a site above the permit line unless otherwise authorized by the state engineer.
 - c. Approved fill must be clean, nonpolluting material free of waste metal, organic material, and unsightly debris.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-10. Projects not requiring a permit. The following projects do not require a permit:

1. Boat docks if:

- a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for the riparian owner's or lessee's personal use;
 - b. The dock is used only for embarkation, debarkation, moorage of boats, or recreation;
 - c. Only clean, nonpolluting materials are used;
 - d. The dock is no more than twenty-five feet [7.6 meters] in length on a river and fifty feet [15.24 meters] in length on a lake, and there is no unreasonable interference with navigation or access to adjacent riparian owner's property;
 - e. The dock is connected to shore by a walkway, and removed from below the permit line each fall;
 - f. There is no excavation or filling below the permit line in excess of that authorized in subsection 4; and
 - g. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.
2. Boat ramps if:
- a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for the riparian owner's or lessee's personal use;
 - b. Excavation of the bank is limited to the minimum width necessary for the placement of a single lane boat ramp adjacent to privately owned property or a double lane boat ramp adjacent to publicly owned property;
 - c. Material excavated from the bank is removed to a location above the permit line;
 - d. Only such clean, nonpolluting fill and riprap material free of waste metal, organic materials, and unsightly debris are placed below the permit line as necessary to construct and stabilize the boat ramp; and
 - e. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.
3. Water intakes if:
- a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for riparian owner's or lessee's personal use;

- b. Excavation of the bank is limited to the minimum width necessary to install and maintain the water intake;
 - c. Materials excavated from the bank are removed to a location above the permit line;
 - d. The intake is entirely removed each fall; and
 - e. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.
4. Dredging or filling if:
- a. The work is completed and maintained by the riparian owner or the riparian owner's lessee;
 - b. The amount of dredge or fill material does not exceed ten cubic yards as part of a single and complete project;
 - c. No stream diversion results;
 - d. No extension of a claim of ownership to an island or any portion of the bed of a navigable stream or water results; and
 - e. Only clean, nonpolluting material free of waste metal, organic materials, and unsightly debris is used.
5. Bridges and bank stabilization by a governmental entity if:
- a. The project is approved by the state engineer;
 - b. Only clean, nonpolluting material free of waste metal, organic materials, and unsightly debris is used for bank stabilization;
 - c. On the Little Missouri River, only washed field stone is used for bank stabilization;
 - d. Work does not exceed the minimum necessary to complete the project; and
 - e. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.
6. Fences crossing the Little Missouri River if:
- a. The fence is marked so it is clearly visible at two hundred yards [182.88 meters]; and
 - b. A clearly marked opening at least eight feet [2.44 meters] in width is provided.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-11. Structures below permit line. Excluding boats that are temporarily moored, the construction or moorage of any residential structure or structure designed for human occupancy will not be permitted below the permit line.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-12. Public recreational use. The public's right to use the islands and beds of navigable streams and waters for nondestructive, recreational purposes is not prohibited except as otherwise provided by these rules.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-13. Vehicular access. The use of motorized vehicles other than boats below the permit line is authorized only in designated areas, in conjunction with the use of navigable waters for transportation or recreation, or as reasonably necessary for activities allowed pursuant to these rules. This section does not authorize use of property outside the permit line but does contemplate use of trails established by a government agency, such as those established for snowmobiles, which are located below the permit line.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-14. Cancellation by the state engineer. The state engineer may cancel any authorization granted pursuant to these rules, including projects authorized by section 89-10-01-10, if the grantee fails to comply with any term or condition of the authorization or this article. In the event of cancellation, not involving an emergency, the procedure set forth below must be followed:

1. The state engineer shall give the grantee thirty days' notice by certified mail, at the last known address of grantee.
2. The thirty-day-notification period begins on the day notice is mailed.

3. The notice shall describe what must be done to correct the breach or violation.
4. During the thirty-day-notification period, the grantee may correct any breach or violation, or request an appearance before the state engineer to show cause why the authorization should not be canceled.
5. The grantee will be notified by certified mail at the last known address of grantee. Cancellation shall take effect on the day it is ordered by the state engineer.
6. Cancellation does not release grantee from any liability.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-15. Termination by applicant. The grantee may terminate or surrender any authorization by notifying the state engineer in writing, paying all fees or royalties or other money owed to the state, and reclaiming the site pursuant to section 89-10-01-18.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-16. Assignments. Any authorization granted pursuant to these regulations may only be assigned with the written consent of the state engineer.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-17. Inspections. The state engineer may inspect all projects which lie below the permit line and enter upon a grantee's land during normal working hours to carry out the inspection.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-33

89-10-01-18. Reclamation. After cancellation, termination, abandonment, or expiration of an authorization, grantee must reclaim the project location. The time allowed for reclamation shall be one hundred twenty days, unless the permit is for mining which shall be reclaimed within sixty days after the lease expires or the mining is complete. The state engineer may extend the time period if good cause is shown.

If grantee fails to reclaim the site to the specifications in the authorization within the required timeframe, the state engineer may enter and restore the project location. The grantee is liable for all reclamation costs.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-19. Maintenance, repair, and reconstruction. Maintenance and repair of projects existing on November 1, 1989, may be completed without additional authorization provided the work is in conformance with the standards and specifications provided in this article, and the work does not alter the use or size of the project.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-20. Areas of special interest. The state engineer may enter agreements for management of areas of high public value. Examples include, but are not limited to, parks, beaches, public access points, nondevelopment areas, and wildlife management areas.

History: Effective November 1, 1989.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

